

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PACIFICORP d/b/a PACIFIC POWER &  
LIGHT COMPANY,

Respondent.

DOCKET UE-090205

PACIFICORP'S RESPONSE IN  
SUPPORT OF COMMISSION  
STAFF'S MOTION FOR  
PREHEARING CONFERENCE

1 PacifiCorp d/b/a Pacific Power (the "Company") respectfully submits this Response in  
Support of Commission Staff's Motion for Prehearing Conference to the Washington  
Utilities and Transportation Commission ("Commission").

**I. INTRODUCTION**

2 All parties agree that testimony supporting the Settlement Stipulation should  
describe the evidence and issues each party analyzed while examining the Company's  
direct case.

3 The point on which the parties' positions diverge is whether testimony filed in  
support of a stipulation must or may go one step further and include specific detail on a  
party's previously unfiled litigation positions. Advocating a position different from past  
practice at the Commission, the Industrial Customers of Northwest Utilities ("ICNU")  
argues that such testimony is proper under WAC 480-07-740(2) (a), which calls for a  
narrative outlining the scope of the underlying dispute. Staff's position is that such

testimony is not required by the Commission's rules, is unprecedented, and is  
unadvisable for a number of legal, policy, and practical reasons.

4           Specific examples illustrate the parties' different viewpoints. ICNU proposes to  
file testimony in support of the Stipulation including rebuttal-like statements similar to  
these:

- My analysis supported elimination of [X] from the Company's model  
because the costs are included but the value of [X] is not properly reflected; the  
Company's modeling of [Y] fails to properly account for the impact of [Y] on the  
contingent variables in the model; the Company understated the value of [Z]  
because the use of projected data for [Z] does not meet the Commission known  
and measurable standard.

- The Company's study encompasses far too much [X] for accurately  
forecasting results. This can be illustrated using the Company's [X] data as  
contained within the Company's study. The data show that the difference  
between the highest and lowest points is [X] and the average is [X]. This  
approach ignores the fundamental cost drivers and includes irrelevant factors in  
the study.

5           Staff proposes to follow the more traditional approach for testimony supporting a  
stipulation, generally summarizing issues or adjustments reviewed, without detail on the  
rationale supporting individual adjustments:

- I analyzed and take a different view from the Company on the issues [X,  
Y & Z] in the Company's model.

- I reviewed the Company’s study and the input data and was prepared to contest the Company’s study.

6 PacifiCorp supports Staff’s approach. The testimony that ICNU proposes to file in this case is not required by the Commission’s rules, nor as discussed below is it otherwise admissible. Additionally, because other parties to the Stipulation object to the testimony as unsupportive of the Stipulation, the “cooperation and support” clause in Section III.N.4 of the Stipulation<sup>1</sup> should preclude the filing of this testimony.

## II. ARGUMENT

7 The Company supports Staff’s legal and policy arguments. The Company has an additional concern regarding the nature and quality of ICNU’s disputed testimony.

8 The type of testimony ICNU proposes should be deemed inadmissible under the Commission’s rules of evidence. WAC 480-07-495(1) directs the consideration of relevancy, necessity and trustworthiness in determining the admissibility of evidence. ICNU’s disputed testimony functions as rebuttal testimony to the Company’s direct case. At this stage, such testimony is not relevant or necessary because the Company’s case has been superseded by the compromise positions set forth in the Stipulation.

9 The question now before the Commission is not whether it should approve the Company’s filed case, but rather whether it should approve the Stipulation. *See Wash. Utilities and Transp. Comm’n v. PacifiCorp*, Docket No. UE-032065, Order No. 6 (Oct. 27, 2004) (When Commission reviews a stipulation: “(1) We ask whether any aspect of the proposal is contrary to law; (2) We ask whether any aspect of the proposal offends

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<sup>1</sup> Settlement Stipulation at ¶ 32.

public policy; and (3) We ask if the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.”)

10 ICNU’s testimony on its adjustment-specific litigation positions will not further the Commission’s three-part review of this Stipulation. For example, ICNU proposes to submit testimony describing more than 20 adjustments to PacifiCorp’s net power cost modeling. There is no connection between this testimony and any element of the Stipulation. The only element of the Stipulation that specifically addresses net power costs is Section III.K,<sup>2</sup> addressing a process for the exchange of workpapers and discovery on net power cost modeling.

11 The Commission has previously indicated that “close scrutiny of individual adjustments contained within a settlement agreement is not required” for approval of a stipulation because the Commission’s focus is on the overall result. *See Wash. Utilities and Transp. Comm’n v. PacifiCorp*, Docket No. UE-032065, Order No. 6 (Oct. 27, 2004). If the Commission’s review of a settlement is not dependent on review of the settlement’s individual adjustments, it is difficult to see how individual adjustments contained within a party’s unfiled rebuttal case are in any way relevant to the Commission’s review and approval of a settlement.

12 If anything, ICNU’s disputed testimony could be relevant only to showing that the settlement does not meet the Commission’s standard for approval. Testimony on ICNU’s litigation position at this stage of the case could be construed as demonstrating the inadequacy of the Stipulation or as an implied criticism of the Stipulation, rather than evidence in support of the Stipulation. When other parties respond to ICNU’s disputed

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<sup>2</sup> Settlement Stipulation at ¶ 24.

testimony, this could suggest that the Stipulation does not fully resolve the issues among the parties. The risk that ICNU's disputed testimony could undermine the Stipulation is the major reason why PacifiCorp has objected to the testimony as inconsistent with the "cooperation and support" clause of the Stipulation.

13           Additionally, ICNU acknowledges that the disputed testimony it proposes to file in this case is a brief description of its experts' analysis and conclusions on the specific issues it contests.<sup>3</sup> Because ICNU's testimony lacks any substantive support, exhibits, workpapers, or back-up detail for the litigation positions it contains, it is not competent or trustworthy. If the disputed testimony is allowed, the Company would need to investigate and challenge it because the testimony: (1) is directed at the Company's direct case, not the Stipulation; (2) is far-reaching in its conclusions; (3) is highly superficial in terms its evidentiary support; and (4) could be cited as evidence against the Company in this and other jurisdictions in the future. To preserve its rights, the Company would need to challenge the testimony and continue to litigate aspects of this case, even in the face of its comprehensive settlement. To avoid this result, the Commission should advise against the filing of ICNU's disputed testimony.

### III. CONCLUSION

14           The Company requests that the Commission grant the relief sought by Staff in its Motion and convene a prehearing conference as soon as practical or otherwise provide the parties guidance on these issues.

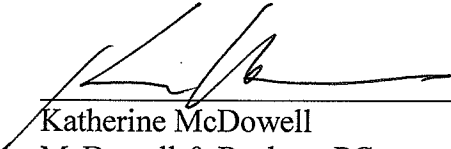
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<sup>3</sup> Response of the Industrial Customers of Northwest Utilities to Commission Staff Motion for Prehearing Conference at 2-3.

DATED this 14<sup>th</sup> day of September, 2009.

Respectfully submitted,

McDowell & Rackner PC



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