BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET NO. UE–032065
Complainant,	)	
v.	)	
PACIFICORP d/b/a/ PACIFIC POWER & LIGHT COMPANY,	)	
Respondent.	)	

INITIAL BRIEF OF

THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

October 8, 2004

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I. INTRODUCTION

1 Pursuant to WAC § 480-07-390 and the schedule adopted in Docket No. UE-032065, the Industrial Customers of Northwest Utilities ("ICNU") submits this Initial Brief. ICNU requests that the Washington Utilities and Transportation Commission ("WUTC" or the "Commission") reject the settlement ("Settlement") entered into by PacifiCorp (or the "Company"), the Natural Resources Defense Council ("NRDC"), and Staff (collectively, the "Settling Parties") on August 27, 2004. The Commission should reject the Settlement because it: 1) is inconsistent with the final order in UE-020417 and the rate plan established in UE-991832 ("Rate Plan"); 2) defers to future proceedings important issues, such as the adoption of an inter-jurisdictional cost allocation methodology and a determination of the prudence of resources added since PacifiCorp's last general rate case; and 3) does not result in rates that are fair, just, or reasonable. If, however, the Commission accepts the Settlement, or otherwise orders a rate change in this proceeding, ICNU requests that the Commission condition its acceptance on use of the Revised Protocol (with ICNU's proposed conditions) for the purposes of calculating rates in this proceeding and reduce the Company's revenue requirement by the adjustments proposed by ICNU and Public Counsel.

II. BACKGROUND

2 The issues surrounding this proceeding date back to PacifiCorp's last general rate case filing in Docket No. UE-991832. On November 24, 1999, PacifiCorp filed tariff revisions designed to effect a general rate increase of 15 percent that would

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have increased the Company's annual revenues by $25.8 million.[1/] Following submittal of testimony and evidentiary hearings, all parties to the proceeding entered a settlement (the "Rate Plan Settlement") that established the five-year Rate Plan, during which parties would neither propose, nor recommend that the Commission approve, any changes to the Company's general base rates in Washington prior to July 1, 2005.[2/] The Rate Plan allowed PacifiCorp to increase its rates by 7.15 percent, or approximately $13.4 million, over three years, followed by a two-year rate moratorium, which expires on December 31, 2005.[3/] The Rate Plan Settlement also deferred for consideration various issues, including the Commission's review of PacifiCorp's resource acquisitions since 1986, none of which had been tested against the Commission's prudence standard.[4/] On August 9, 2000, the Commission approved and adopted the Rate Plan Settlement, noting its reservations concerning the deferral of the Commission's review of the prudency of PacifiCorp's resource acquisitions.[5/]

3 On April 5, 2002, after PacifiCorp benefited from three years of rate increases, the Company filed a petition for an order authorizing deferral of excess net power costs that were allegedly incurred as a result of the western power crisis.[6/] The Commission ultimately denied PacifiCorp's petition, but authorized the Company to file

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1/ WUTC v. PacifiCorp, Docket No. UE-991832, Third Suppl. Order, ¶¶ 1, 4 (Aug. 9, 2000).
2/ WUTC v. PacifiCorp, Docket No. UE-991832, Comprehensive Stipulation at 2 (June 16, 2000).
3/ Id. at 2-4; WUTC v. PacifiCorp, Docket Nos. UE-991832 and UE-020417, Sixth/Eighth Suppl. Order, ¶ 15 (July 15, 2003) ("Amending Order"). Although PacifiCorp was barred from filing a new general rate case during the Rate Plan, customers' rates were expected to increase twice over the last two years of the Rate Plan because of the expiration of the Centralia gain credit and the Scottish Power merger credit.
4/ WUTC v. PacifiCorp, Docket No. UE-991832, Comprehensive Stipulation at 4-5.
5/ WUTC v. PacifiCorp, Docket No. UE-991832, Third Suppl. Order, ¶¶ 3, 61-62 (Aug. 9, 2000).
6/ Re PacifiCorp, Docket No. UE-020417, Petition at 1 (Apr. 5, 2002).

a general rate case prior to the end of the Rate Plan period. In doing so, the Commission noted that "PacifiCorp's Washington operations have not been thoroughly reviewed on a full general rate case record in 17 years. Such an examination is long overdue . . . ."[7/] The Commission also found that PacifiCorp's lack of an inter-jurisdictional cost allocation methodology was a "key problem" and one reason that a general rate case was desirable.[8/]

4 On December 16, 2003, PacifiCorp filed revised tariff schedules and initial testimony in this Docket, requesting a 13.5 percent, or $26.7 million, increase in its base rates in Washington. PacifiCorp also advocated that the Commission adopt the Original Protocol for use as Washington's inter-jurisdictional allocation methodology.[9/] The Commission suspended PacifiCorp's tariff filing on January 14, 2004.[10/] On May 21, 2004, PacifiCorp filed its Revised Protocol in both Oregon and Utah, but failed to supplement its direct testimony to include the Revised Protocol in Washington.[11/]

5 On June 30, 2004, Commission Staff, Public Counsel, ICNU, the Citizens' Utility Alliance, and NRDC filed response testimony. Staff recommended a revenue requirement increase of $7.1 million, or 3.5 percent, and proposed the use of the control area ("Control Area") methodology for purposes of allocating inter-jurisdictional costs in

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7/ Amending Order at ¶ 23.
8/ Id. at ¶ 30.
9/ WUTC v. PacifiCorp, Docket No. UE-032065, Order No. 02, ¶ 1 (Jan. 28, 2004).
10/ WUTC v. PacifiCorp, Docket No. UE-032065, Order No. 01, ¶ 2 (Jan. 14, 2004).
11/ Exhibit ("Exh.") No. 85 (PacifiCorp Response to ICNU Data Request ("DR") No. 8.2).

this proceeding.[12] Staff also urged the Commission to take no action concerning the prudency of certain generating resources located in the Company's eastern control area ("Eastern Control Area"), because Staff excluded these resources from Washington rates through its proposed Control Area methodology.[13]

6 ICNU's response testimony focused on specific adjustments that were not addressed by other parties to the proceeding.[14] These adjustments would decrease PacifiCorp's requested increase in Washington revenue requirement by approximately $10.8 million.[15]

7 On July 28, 2004, the Company filed rebuttal testimony, reducing its requested rate relief to $25.7 million. PacifiCorp included the Revised Protocol in its rebuttal testimony because the Company's "preference would be that Washington rates would be established based upon the Revised Protocol;" however, PacifiCorp stated that it "would not oppose deciding this case on the basis of the original Protocol included in the Company's direct case."[16]

8 On August 27, 2004, PacifiCorp, Staff, and NRDC entered the Settlement, which recommends a revenue requirement increase of $15.5 million.[17] In addition, the Settlement proposed using the Original Protocol as a provisional allocation method for

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[12] Exh. No. 561 at 15: 3-9 (Braden); Exh. No. 581 at 106: 1-3 (Buckley). For the long-term, Staff recommended that "the Commission order the Company to move toward a Washington stand-alone or 'islanding' approach to evaluate the costs of Washington operations." Exh. No. 581 at 105: 13-15 (Buckley).

[13] Exh. No. 581 at 9: 5-15, 65 – 71, 85 – 97 (Buckley).

[14] Exh. No. 461C at 1: 22 – 2: 8 (Schoenbeck); ICNU Second Suppl. Response to Bench Request 3.

[15] Exh. No. 401C at 7 (Falkenberg); Exh. No. 461C at 3 (Schoenbeck); ICNU Second Suppl. Response to Bench Request 3.

[16] Exh. No. 32 at 7: 5-9 (Furman).

[17] Exh. No. 3 at ¶ 9 (Settlement).

purposes of implementing the $15.5 million rate increase, but would postpone the adoption of a permanent inter-jurisdictional cost allocation methodology until a subsequent proceeding.[18/] The Settlement also included in rates the resources acquired by PacifiCorp since 1986, including Eastern Control Area resources, such as West Valley and Gadsby, but deferred a prudence review of these resources until the Company's next general rate case.[19/] Evidentiary hearings, including live surrebuttal testimony, were held on September 9, 10, 16, and 17, 2004.

III. ARGUMENT

9 PacifiCorp has not met its burden of proof to justify that the $15.5 million rate increase provided in the Settlement results in rates that are fair, just, and reasonable. Further, PacifiCorp has not provided any legitimate reason to allow it to increase rates above the level it agreed to in the Rate Plan Settlement. The evidence establishes that PacifiCorp's current and expected earnings are well within the level that the Company expected to achieve under the Rate Plan. Thus, the Commission should reject the Settlement and maintain rates at the levels agreed to in the Rate Plan, until the Rate Plan expires on December 31, 2005.

10 The Settlement should be rejected because it does not resolve the issues the Commission sought to address when it amended the Rate Plan to allow the Company to file a general rate case, including establishing an appropriate inter-jurisdictional cost allocation methodology. Instead of resolving this key issue, the Settlement adopts the Protocol (or "Original Protocol") as an interim cost allocation methodology, despite the

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18/ Id. at ¶ 8.
19/ Id. at ¶ 10(c).

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fact that it is outdated, obsolete, and the worst possible methodology for Washington customers. The Settlement also inappropriately includes in rates the costs associated with the Company's Eastern Control Area resources without a review of whether these resources were prudently incurred or properly allocable to Washington customers.

11 Even if the Commission voids the Rate Plan Settlement, PacifiCorp has not demonstrated that it is entitled to a rate increase. The Settlement is inherently flawed because it does not address adjustments that ICNU and Public Counsel have demonstrated are necessary and appropriate. ICNU and Public Counsel demonstrated through expert testimony that significant additional adjustments need to be made to the Company's revenue requirement agreed to under the Settlement. Mr. Falkenberg's contested adjustments include a Bonneville Power Administration ("BPA") adjustment, long-term contract adjustments, modeling adjustments, non-power cost adjustments concerning Gadsby and the Western Area Power Administration ("WAPA") transmission contracts, and multi-state process ("MSP") adjustments; and Mr. Schoenbeck supported adjustments pertaining to steam plant maintenance and outside services expenses.

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12 The ICNU and Public Counsel adjustments[20] that remain outstanding and should be made to the $15.5 million revenue requirement increase in the Settlement are summarized in the following table:[21]

ICNU Proposed Adjustments	
BPA Settlement Adjustment	$601,984
Long-term Contract Adjustments	$600,939
Modeling Adjustments[22]	$2,040,436
Non-Power Cost Adjustments (including Gadsby and the WAPA transmission contract)	$551,760
MSP Adjustments[23]	$3,647,409
Steam Plant Maintenance Adjustment	$861,000
Outside Services Adjustment	$642,000
Total ICNU Proposed Adjustments	**$8,945,528**
Public Counsel Cost of Capital Adjustment[24]	$6,900,000
Total Proposed Adjustments	**$15,845,528**

20/ The proposed adjustments do not include any revenue requirement adjustments that would be necessary if the Commission adopts the Revised Protocol as the cost allocation methodology for this proceeding.

21/ All dollar amounts are for the Company's Washington jurisdiction, unless otherwise noted. Total dollar amounts will differ based upon the cost allocation methodology the Commission adopts in this proceeding. In addition, except for Mr. Falkenberg's full hydro fuel credit MSP adjustment ($858,000), which only applies to the Original Protocol, all of ICNU's proposed adjustments will apply regardless of whether rates are based on the Original Protocol or the Revised Protocol. *See* TR. 610 – 613 (Falkenberg).

22/ The overlapping portions of adjustments related to the increased market size limit and West Valley/Gadsby heat rate adjustments were removed because they were included in the Settlement (Appendix B) and subsumed into the corresponding ICNU adjustment. The overlapping amounts were computed from the system level adjustment in Appendix B and the retail jurisdictional allocators to derive the amount applicable to Washington retail jurisdiction. *See* Exh. No. 425 (Adjustments in Dispute); Exh. No. 3 (Settlement).

23/ If the Commission adopts the Revised Protocol, then Mr. Falkenberg's MSP adjustment should be reduced to $2,789,000, to avoid double counting the full hydro fuel credit, which is subsumed in the embedded cost differential method used in Revised Protocol.

24/ ICNU has not calculated Public Counsel's other revenue requirement reductions. ICNU supports Mr. Dittmer's IRS settlement and miscellaneous deferred debits/regulatory assets adjustments that would further reduce PacifiCorp's revenue requirement.

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ICNU's adjustments are described in further detail in the pre-filed direct testimony and live surrebuttal testimony of ICNU witnesses Falkenberg and Schoenbeck.[25/] When ICNU and Public Counsel's adjustments are combined with the non-duplicative adjustments agreed to by PacifiCorp in the Settlement, it is clear that the Company is not entitled to any increase in rates.

A. The Company Bears the Burden of Proof to Demonstrate that Its Proposed Rates Are Just and Reasonable and that the Settlement Is in the Public Interest

13 As the proponent of a general rate increase, PacifiCorp has the burden of proof to demonstrate that its proposed tariffs are just and reasonable.[26/] This burden includes "the burden of going forward with evidence and the burden of persuasion."[27/] The Company retains this burden throughout the proceeding and must establish "by a preponderance of the evidence that the rate" change is just and reasonable.[28/] In addition, a higher burden of proof should be required before raising rates in this proceeding, because the rates established by the Rate Plan were part of an all party settlement agreement that should not be abrogated without a compelling reason.[29/]

14 The Commission has discretion to accept, reject, or condition a settlement agreement.[30/] A settlement agreement will only be approved if "doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent

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25/ Exh. No. 401C (Falkenberg); Exh. No. 461C (Schoenbeck); TR. 120: 14 – 142: 7 (Schoenbeck); TR. 533: 2 – 551: 16 (Falkenberg).

26/ RCW § 80.04.130(4); WAC § 480-07-540; WUTC v. PacifiCorp, Docket No. UE-032065, Order No. 01, ¶ 9 (Jan. 14, 2004).

27/ WAC § 480-07-540.

28/ WUTC v. Pacific Power & Light Co., Cause No. U-84-65, Fourth Suppl. Order at 17 (Aug. 2, 1985).

29/ TR. 559: 14 – 560: 12 (Falkenberg).

30/ WAC § 480-07-750(2).

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with the public interest in light of all the information available to the commission.”[31] Thus, the Company must prove that the revenue requirement included in the Settlement is fair, just, reasonable, and in the public interest.

B. The Settlement Does Not Satisfy the Requirements of the Commission’s Order Amending the Rate Plan

15 PacifiCorp has not demonstrated that it is entitled to a rate increase prior to the end of the Rate Plan period, because the Company’s financial condition is consistent with the expectations under the Rate Plan, and the Settlement does not resolve the issues that the Commission sought to address when it amended the Rate Plan.[32] The Amending Order did not resolve whether PacifiCorp should be allowed to increase its rates prior to the end of the Rate Plan period. Although the Commission acknowledged that it might allow PacifiCorp to increase rates after a rate case, the Commission did not abrogate the entire Rate Plan. Instead the Commission found “that PacifiCorp is authorized to file a general rate case prior to December 31, 2003, instead of July 1, 2005.”[33]

16 The Commission allowed PacifiCorp to file a general rate case because it found that the record in Docket No. UE-020417 was “not adequate” to judge whether the Company’s rates were fair, just, reasonable, and sufficient and that “the public interest requires a thorough and detailed examination of PacifiCorp’s financial condition and Washington rates at an early date.”[34] The Commission’s conclusion was based on a concern about the Company’s financial condition and ability to earn reasonable returns,

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31/ WAC § 480-07-750(1).
32/ TR. 121 – 127, 190: 9-18 (Schoenbeck); Exh. No. 460 (ROE Comparison).
33/ Amending Order at ¶ 3.
34/ Id. at ¶¶ 3, 23.

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the lack of an appropriate multi-state cost allocation methodology, and a desire to closely scrutinize PacifiCorp's operations.[35]

17 Contrary to the requirements in the Commission's ruling, the Settlement has not resulted in a comprehensive review of the Company's operations, nor does it resolve critical issues such as an interstate cost allocation methodology, the prudence of certain generating resources, and an appropriate authorized return on equity ("ROE") for PacifiCorp.[36] Similarly, both PacifiCorp's case and the Settlement demonstrate that the Company is able to absorb cost increases and earn expected returns until the end of the Rate Plan period without additional rate increases.[37]

1. PacifiCorp's Earnings Are Consistent with Expectations Under the Rate Plan

18 The Commission allowed PacifiCorp to file a general rate case during the Rate Plan because it was concerned with "the need to provide PacifiCorp an opportunity to earn a reasonable return over the next several years."[38] The Commission rejected PacifiCorp's claim that the Company was experiencing financial conditions sufficient to warrant interim rate relief and the assertions that the Company was somehow entitled to any rate relief due to its alleged past financial losses.[39] However, the Commission concluded that PacifiCorp's allegations of poor earnings during the end of Rate Plan period were an issue that "should be taken up in the context of a general rate

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[35] Id. at ¶¶ 26-27, 30-31, 38-41, 43; *see also* TR. 141: 12-18 (Schoenbeck), 332: 17 – 334: 4 (Braden and Omohundro).

[36] Exh. No. 3 at ¶ 8, 10(a), 10(c), 13 (Settlement); Exh. No. 566 (Staff Response to ICNU DR No. 1.16); TR. 121: 5 – 122: 20, 131: 9-24, 141: 1-18 (Schoenbeck), 534: 16 – 539: 12 (Falkenberg).

[37] TR. 123: 15 – 125: 5 (Schoenbeck).

[38] Amending Order at ¶¶ 38-41.

[39] Id. at ¶¶ 22, 36.

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proceeding."[40/] This conclusion was based on PacifiCorp's statement "that it may not achieve a reasonable return on its Washington operations due in part to the lingering effects of the power market crisis."[41/] Specifically, PacifiCorp claimed that it had lost its ability "to absorb the normal, more routine cost increases in the months and years remaining in the Rate Plan"[42/] and that its "expected financial returns for the remainder of the Rate Plan Period are grossly inadequate."[43/]

19 The record demonstrates that PacifiCorp should be able to earn the returns the Company agreed to under the Rate Plan Settlement for the remainder of the Rate Plan and that its current rates are fair, just, reasonable, and sufficient.[44/] PacifiCorp's claim that its earnings would "deteriorate significantly"[45/] during the Rate Plan has proven false, because its earnings have improved since the Company filed its request for a power cost deferral in Docket No. UE-020417 in 2002. PacifiCorp alleged that it was earning a 6.9 percent ROE at the time of its deferral request.[46/] In uncontested testimony, Mr. Schoenbeck demonstrated that, if the Company does not obtain a rate increase in this proceeding, "the Company would still earn about a 7 to 7.4 percent return on common equity."[47/] Thus, PacifiCorp's current earnings exceed its earnings at the time of the deferral request and do not represent any earnings deterioration.

40/ Id. at ¶ 39.
41/ Id. at ¶ 41.
42/ Re PacifiCorp, Docket No. UE-020417, PacifiCorp Post-hearing Brief at 2 (Apr. 11, 2003).
43/ Id. at 7; Amending Order at ¶ 34.
44/ TR. 123 – 125 (Schoenbeck); Exh. No. 460 (ROE Comparison).
45/ Re PacifiCorp, Docket No. UE-020417, PacifiCorp Post-hearing Brief at 10.
46/ Amending Order at ¶ 38 n.15.
47/ TR. 123: 15-23 (Schoenbeck); Exh. No. 460 (ROE Comparison).

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20 Under the Rate Plan, PacifiCorp agreed that it would not receive additional revenues unless it was experiencing conditions sufficient to warrant interim rate relief. In addition, "the Company agreed to an implicit return of between 7% and 8% under the Rate Plan."[48] The Company's current earnings of over 7 percent are consistent with what PacifiCorp agreed to and what "would have been expected in the final year of [the] rate plan."[49] These earnings do not show that PacifiCorp is suffering a financial emergency or other conditions that would warrant further amendment of the Rate Plan to allow PacifiCorp to increase rates. In contrast, if the Stipulation is approved, PacifiCorp's earnings will significantly exceed what the Company expected to obtain during the final years of the Rate Plan.[50]

2. The Settlement Does Not Provide a Comprehensive Analysis and Determination of PacifiCorp's Costs

21 The Commission observed in the Amending Order that a general rate case was necessary because PacifiCorp "has not been closely scrutinized in a general rate proceeding for nearly two decades," and it concluded that such an examination is long overdue.[51] The Commission reiterated the concern it voiced at the time it approved the Rate Plan that there were significant unresolved issues, including the prudence of resources that PacifiCorp had acquired since 1986.[52] Because the Rate Plan did not resolve these issues, the Commission found that there was no "sound basis" upon which

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[48] Amending Order at ¶ 38 n.15; WUTC v. PacifiCorp, Docket No. UE-991832, Comprehensive Stipulation at 7 (June 16, 2000).

[49] TR. 123: 19-20 (Schoenbeck).

[50] *See* Exh. No. 460 (ROE Comparison); TR. 129: 8 – 130: 16 (Schoenbeck).

[51] Amending Order at ¶¶ 23, 43.

[52] Id. at ¶ 26.

to set rates or review PacifiCorp's power cost deferral application.[53] Similarly, the Commission found that another "key problem" was the lack of an "appropriate basis for inter-jurisdictional allocation of power costs," and the Commission authorized a general rate case, in part, due to the "absence of an allocation methodology . . . ."[54] Finally, since the Rate Plan did not include an explicit authorized ROE, it was difficult for the Commission to achieve a through and comprehensive understanding of the Company's financial condition.

22 The Settlement does not resolve most of the critical issues that the Commission required the parties to address in this proceeding, nor does it carefully or comprehensively review the Company's operations. As explained by Staff witnesses Schooley and Braden, the Settlement is simply "a means to arrive at a revenue requirement increase of $15.5 million,"[55] and PacifiCorp and "Staff can arrive at the same revenue requirement by vastly different means . . . ."[56]

23 An inter-jurisdictional allocation methodology was not agreed upon in the Settlement, and the Settling Parties admit that there is not "a satisfactory resolution of the inter-jurisdictional cost allocation issue . . . ."[57] Instead of resolving the issue, the Settling Parties have agreed "to jointly discuss development of a mutually acceptable cost

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[53] Id. at ¶ 27; *see also* TR. 371: 12-20 (Schooley).

[54] Amending Order at ¶¶ 30-31.

[55] TR. 374: 4-6 (Schooley).

[56] TR. 386: 14-20 (Schooley); 646: 1-15, 659: 18 – 660: 9 (Braden) ("[R]egardless of which allocation methodology you might use to add up or combine the numbers in different ways to reach" the $15.5 million, Staff agreed to the Settlement based on "the bottom line revenue requirement . . . .").

[57] Exh. No. 1 at 6: 7-9 (Braden et al.); *see also* TR. 141: 12-18 (Schoenbeck), 329: 12-17 (Braden and Omohundro), 356: 22 – 357: 2 (Braden).

allocation proposal applicable to Washington."[58] Essentially, Staff and PacifiCorp have agreed to "a place holder with regard to this issue,"[59] despite the fact that the Commission allowed PacifiCorp to amend the Rate Plan in order to resolve this "key problem."[60] This non-resolution is inappropriate, as explained by Mr. Falkenberg:

> [T]he problem that we've got is that if that stipulation is accepted, we will have gotten the negative outcome of the general rate case, which was to have a rate increase, even though we had the rate plan guarantee us that we wouldn't, and yet we wouldn't have one of the benefits that was thought about and talked about in the form of a resolution of the MSP issues.[61]

24 The Settlement also fails to recommend or support an authorized ROE for the Company.[62] The failure to address the Company's authorized earnings or appropriate cost of capital will make it difficult for the Commission to evaluate whether PacifiCorp's earnings are excessive or whether the Company will be able to meet the interim rate relief standard.

25 Power cost issues also are unresolved because the Settling Parties refused to address the issue of whether the generating resources acquired by the Company since 1986 in its Eastern Control Area are prudent and "properly allocable to Washington."[63] The Settlement specifically states that "Staff does not take a position . . . with respect to

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[58] Exh. No. 3 at ¶ 8(b) (Settlement).
[59] TR. 141: 12-18 (Schoenbeck).
[60] Amending Order at ¶¶ 30-31.
[61] TR. 537: 6-13 (Falkenberg).
[62] Exh. No. 1 at 10: 16-18 (Braden et al.); Exh. No. 3 at ¶ 10(a) (Settlement); Exh. No. 566 (Staff Response to ICNU DR No. 1.16); Exh. No. 460 (ROE Comparison); TR. 336: 1 – 337: 15 (Braden).
[63] Exh. No. 1 at 16: 25-26 (Braden et al.); TR. 338: 3 – 339: 2, 340: 2 – 341: 3 (Braden and Omohundro), 386: 14 – 387: 29 (Schooley), 534: 16 – 535: 18, 546: 19 – 551: 14 (Falkenberg).

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the prudence for purposes of Washington rates of those resources acquired since 1986 located in the Company's Eastern Control Area."[64]

26 The Settlement virtually ignores power cost adjustments regarding the Eastern Control Area because Staff did not review these resources.[65] Mr. Braden testified that Staff "simply had not done the analysis of [the Eastern Control Area resources] that would have been required to evaluate the use of those resources for Washington customer service . . . ."[66] Similarly, Mr. Buckley explained that Staff did not "address the prudence of the Company's acquisition of" West Valley and Gadsby because "Staff's recommendation regarding the inter-jurisdictional costs allocation method for this proceeding does not require the Commission [to take] action on these resources."[67]

27 Although Staff did not review the Eastern Control Area resources, these resources are included in rates under the Settlement. In the Settlement, the Settling Parties explicitly agreed to an overall power cost number of $534 million.[68] This amount was based on PacifiCorp's GRID power cost model run that was included in the Company's rebuttal case, as adjusted by specific adjustments identified in Exhibit B to the Settlement. The agreed-upon net power costs include Eastern Control Area resources, subject only to those adjustments specifically enumerated in the Settlement.[69] In fact, the Settlement includes Mr. Falkenberg's adjustment for the West Valley heat rates, but it

64/ Exh. No. 1 at 15: 13-17 (Braden et al.).

65/ *See* id. at 15: 11-20 (Braden et al.); Exh. No. 3 at ¶ 10(c) (Settlement); Exh. No. 581 at 9: 5-15, 65: 10 – 71: 5, 85: 1 – 98: 4, 117: 8-15 (Buckley); TR. 338: 10 – 339: 2, 340: 1 – 341: 3 (Braden).

66/ TR. 340: 10 – 341: 3 (Braden).

67/ Ex. No. 581 at 91: 11-14 (Buckley).

68/ Exh. No. 1 at 12 (Braden et al.); Exh. No. 3 at ¶ 10(b), Attachment B (Settlement).

69/ TR. 535: 2-23 (Falkenberg); *see also* Exh. No. 1 at 12: 21-24; TR. 666: 12-15 (Widmer).

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does not exclude West Valley costs that remain in the overall $534 million power cost number.[70] Therefore, these resources are being placed in rates without a Staff analysis regarding whether they were prudently incurred. This is troubling, given the fact that determining the prudence of new resources was a significant reason for allowing PacifiCorp to file this rate case.[71] Furthermore, the Commission has stated "that the utility seeking permanent recovery of resource acquisition costs in general rate cases bears the burden of proof with respect to the prudence of the acquisition."[72] Likewise, the Commission has acknowledged that allowing the cost of new resources in rates without a prudence determination would "violate the Commission's duty to ensure that rates are based on prudent costs."[73]

28 Instead of determining whether it is appropriate to include these costs in rates, the Settlement defers the review of these resources until after the Commission adopts a permanent cost allocation methodology. This is especially inappropriate when the evidence demonstrates that the Company's power costs are significantly exaggerated.[74] The failure to address the prudency of these resources means that there is no sound basis upon which to grant a general rate increase and that the Settlement does not address a central concern that led the Commission to amend the Rate Plan.

29 In addition to the inconsistency with the Amending Order, it is inappropriate to approve rates without resolving these issues because customers

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[70] Exh. No. 3, Attachment B (Settlement); *see also* TR. 535: 2-23 (Falkenberg); Exh. No. 1 at 12: 21-24.

[71] Amending Order at ¶ 26.

[72] Re Puget Sound Power & Light Co., Docket Nos. UE-920433, UE-920499, and UE-921262, Eleventh Suppl. Order at 23 (Sept. 21, 1993).

[73] Id.

[74] Exh. No. 401C at 2 – 51 (Falkenberg).

negotiated for and were relying upon a freeze on general rate increases during the last two years of the Rate Plan.[75] Unless PacifiCorp was entitled to an interim rate increase due to a financial emergency, Washington customers were not "expecting this type of a rate increase generated by the $15 million" during the Rate Plan.[76] Further, any rate increase approved by the Commission in this proceeding is in addition to the rate increases customers will experience from the expiration of the merger credit and the credit from the Centralia gain.[77] In combination, the credit expirations and the Settlement would result in a double-digit rate increase, with an approximately $1.3 million rate increase for one industrial customer.[78] Under the circumstances discussed above, there is no legitimate reason to deviate from the rates established by the Rate Plan.

C. The Settlement Fails to Establish a Permanent Inter-jurisdictional Allocation Solution and Puts in Place an Interim Allocation Method that Significantly Harms Customers

30 The Commission should reject the Settlement because it suffers from a number of undeniable flaws regarding cost allocation issues. The Settling Parties' proposal to use Protocol as the methodology upon which to set rates in this proceeding simply makes no sense. The Protocol is obsolete and results in a higher PacifiCorp revenue requirement in Washington compared to all the other options, including the Rolled-In and Modified Accord methodologies.[79] The Revised Protocol that the Settling Parties recommend be used for certain future PacifiCorp filings is an improvement over

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[75] TR. 122: 21 – 123: 22 (Schoenbeck).
[76] Id. at 122: 24 – 123: 2 (Schoenbeck).
[77] *See* id. at 123 (Schoenbeck).
[78] Id.
[79] Exh. No. 401C at 59: 24-25 (Falkenberg); TR. 538: 2 – 540: 25 (Falkenberg).

the Original Protocol, but it still would require the Commission to adopt appropriate conditions in order to protect Washington customers.

31 In short, the Settlement represents the worst possible outcome for customers because it puts in place an obsolete and unnecessarily expensive allocation methodology for the present, and it provides the prospect of an inadequately protective allocation methodology in the future. As described above, ICNU recommends that the Commission reject both the Settlement and PacifiCorp's rate increase request. Nevertheless, if the Commission intends to authorize a rate change in this proceeding, it will be necessary to designate an allocation methodology upon which rates will be based. To provide a workable allocation methodology for Washington customers, ICNU urges the Commission to adopt the Revised Protocol, along with certain specific conditions to protect customers. If the Commission adopts the Revised Protocol, it should require the Company to recalculate rates under the Settlement.

1. The Settlement Does Not Adequately Address the Need for a Permanent and Workable Allocation Methodology in Washington

32 PacifiCorp has made clear that it is seeking to implement the Revised Protocol in each of its jurisdictions.[80/] PacifiCorp already has requested adoption of the Revised Protocol in Utah and Oregon, and the Company indicated that it was close to securing agreement regarding that methodology in Wyoming and Idaho.[81/] Furthermore, the Settlement does not address what will happen if Staff and PacifiCorp do not agree on a solution in the future. Given the long, contentious process surrounding the inter-

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[80/] Exh. No. 73 at 3: 12 – 4: 8 (Kelly); Exh. No. 85 (PacifiCorp Response to ICNU DR No. 8.2).
[81/] Id.

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jurisdictional allocation issue up to this point, and the value PacifiCorp has placed on achieving a uniform allocation methodology across all jurisdictions, it seems unlikely that the Company would agree to any methodology other than a version of the Revised Protocol.

2. The Allocation Methodology Adopted Under the Settlement is Unfavorable to Washington Customers

33 The second fundamental problem with the resolution of allocation issues in the Settlement is that the Protocol substantially harms Washington customers. As indicated above, the Settlement provides that the Protocol will be used to establish rates in this proceeding, and the Revised Protocol will be used by PacifiCorp in future filings.[82/] The Protocol is the worst possible result for Washington customers out of all the options available to the Commission.[83/] As demonstrated by Mr. Falkenberg, the Protocol and Revised Protocol are "radically different documents, with substantially different cost impacts on Washington."[84/] Mr. Falkenberg explained:

> [T]he original protocol is really the worst method, from a revenue requirements point of view, for Washington. It's worse than the hybrid method, it's worse than the . . . revised protocol, it's worse than [the] modified accord, and it's worse than the rolled-in method.[85/]

[82/] Exh. No. 3 at ¶ 8 (Settlement). It appears that PacifiCorp and Staff already may disagree on the meaning of this provision. At hearing, Staff witness Braden indicated that he "would not agree" with counsel for PacifiCorp's statement that Revised Protocol is the "method that will be used in Washington until agreement is reached in Washington on a substitute method[.]" TR. 377: 17-24 (Braden).

[83/] TR. 537: 17 – 538: 1 (Falkenberg).

[84/] Exh. No. 401C at 57: 10-12 (Falkenberg).

[85/] TR. 537: 21 – 538: 1 (Falkenberg); *see also* TR. 540 (Falkenberg); Exh. No. 401C at 61-63 (Falkenberg).

a. The Protocol is Obsolete and Makes Washington Customers Responsible for a Disproportionate Amount of System Costs

34 The Protocol is outdated compared to the current inter-jurisdictional allocation methodologies under consideration throughout PacifiCorp's operating jurisdictions.[86/] At oral argument held before the Oregon Public Utility Commission ("OPUC") on August 26, 2004, counsel for PacifiCorp described the Protocol as "admittedly obsolete."[87/] PacifiCorp is not advocating use of the Protocol in any other jurisdiction. As explained by Mr. Falkenberg, adopting rates based on the Protocol is "like buying an Edsel . . . you're buying something that's a lemon and nobody wants it . . . ."[88/] It makes no sense to establish rates in this case on the basis of an obsolete allocation methodology, especially when that method is more detrimental to Washington customers than any of the other viable options.

35 Staff has argued that the Protocol was used because Staff did not have the information necessary to evaluate the Settlement under the Revised Protocol or another methodology.[89/] This is simply untrue. PacifiCorp provided a revised revenue requirement in its rebuttal testimony based on the Revised Protocol.[90/] The numbers were available, Staff simply did not do the necessary work to evaluate them based on the Revised Protocol. Moreover, Mr. Falkenberg testified that evaluating the Settlement on the basis of Revised Protocol would not be difficult.[91/]

86/ TR. 538: 2-7.
87/ Exh. No. 12 at 20 (Transcript of Oral Argument – MSP Hearing, OPUC Docket No. UM 1050).
88/ TR. 538: 7-13 (Falkenberg).
89/ TR. 654: 1 – 658: 16 (Braden).
90/ *See*, *e.g.,* Exh. No. 310 at 1 (Taylor).
91/ TR. 540: 2-17; *see also* Exh. No. 32 at 7: 13-21 (Furman).

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36 Although adoption of an obsolete allocation methodology might make sense if Washington ratepayers somehow benefited from that methodology, the Protocol actually would increase PacifiCorp's Washington revenue requirement in this proceeding,[92/] and the increase would be significantly more than the Modified Accord or the Rolled-In methodology currently in effect in Utah.[93/]

37 Adopting the Revised Protocol instead of the Original Protocol will reduce the Company's overall Washington revenue requirement. According to the Company's rebuttal case, utilizing the Revised Protocol rather than the Original Protocol as the allocation methodology reduces the Company's revised $25.7 million rate request by almost 10 percent, or approximately $2.5 million.[94/] Although the Company presented conflicting testimony regarding the effect of adopting the Revised Protocol with respect to the Settlement,[95/] Mr. Falkenberg unequivocally concluded that it is not "a reasonable or possible outcome, that revised protocol could increase the revenue requirements."[96/] Although Mr. Braden admitted that Staff had not given the Revised Protocol "any degree of scrutiny" or evaluated the impact of the Revised Protocol on PacifiCorp's revenue requirement, he testified that any difference between Protocol and Revised Protocol was "relatively inconsequential."[97/] However, an adjustment that could represent a 10 percent reduction in the Company's rate increase is not "inconsequential" for customers.

92/ Exh. No. 401C at 59: 24-25.

93/ Id.

94/ Exh. No. 310 at 1 (Taylor); Exh. No. 32 at 7 (Furman).

95/ *Compare* TR. 204: 1-6 (Furman) ("utilizing original protocol allows PacifiCorp to recover more costs from Washington ratepayers than utilizing revised protocol") *with* TR. 378: 21 – 382: 19 (Kelly).

96/ TR. 540: 23-25 (Falkenberg).

97/ TR. 323: 23 – 324: 21, 651: 10-15 (Braden); *see also* TR. 372: 4-15 (Schooley).

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Customers should not be penalized by the adoption of an outdated Protocol simply because the Staff did not do the work necessary to inform itself of the impact of the Revised Protocol.

38 The Protocol also does not properly compensate Washington customers for PacifiCorp's low-cost hydro resources or provide structural protections against the costs of Utah load growth. Under the Protocol, the only benefit of hydro resources to Washington customers is avoiding the assignment of the fuel and fixed costs of the Huntington coal plant in Utah, which are assigned to eastern division states as part of the so-called "coal endowment."[98/] As explained by Mr. Falkenberg, this does not adequately compensate Washington customers for the value of the low-cost hydro resources.[99/] Furthermore, the Protocol also does not assign any value to the hydro resources for load following or dynamic overlay (spinning reserve). Mr. Falkenberg demonstrated that the Protocol should be adjusted to reflect these benefits.[100/]

39 With respect to cost shifting, PacifiCorp's witnesses have testified that cost shifting is not a major concern.[101/] The evidence demonstrates, however, that the Protocol forces Washington customers to bear significant costs from 2005 to 2018 due to Utah load growth,[102/] and this estimate does not even take into account resources such as West Valley and Gadsby. Mr. Falkenberg demonstrated that his MSP adjustments on this issue are appropriate to protect Washington customers.[103/]

98/ Exh. No. 401C at 66: 7-10 (Falkenberg).
99/ Id. at 66: 11-13.
100/ Exh. No. 401C at 72: 16-19 (Falkenberg); *see also* Exh. No. 428C at 35: 15-19 (Falkenberg).
101/ *E.g.,* Exh. No. 101 at 16: 8-12 (Duvall).
102/ Exh. No. 401C at 68: 4-7 (Falkenberg).
103/ Id. at 71-80.

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b. The Revised Protocol Improves on the Protocol but Appropriate Conditions Should Be Adopted to Ensure Customer Benefits

40 The Revised Protocol is an improvement, but it contains deficiencies similar to those described above regarding the Protocol. Nevertheless, use of the Revised Protocol would benefit Washington customers and would be relatively easy to implement. PacifiCorp witness Furman explained the benefits of using the Revised Protocol in rebuttal testimony:

> [T]he Revised Protocol would result in a reduction in Washington revenue requirement of $2.5 million compared to the original Protocol as filed in Washington . . . . [W]hile the changes from the original Protocol are material, they are relatively few in number and fairly straightforward. We would hope that the changes would not be resisted in principle in a manner that denies Washington consumers the benefits of the Revised Protocol and further complicates the MSP.[104]

The Revised Protocol could provide a workable permanent allocation methodology for Washington customers, if the Commission adopts the appropriate supporting conditions described below.

i. The Revised Protocol Contains an Improved Hydro Endowment but Still Undervalues the Hydro Resources

41 One of the primary problems with the Protocol for Washington is that the Hydro Endowment is based solely on the benefit of avoiding an allocation of the costs of the Huntington coal plant in Utah. The Revised Protocol abandoned this approach in favor of a different methodology that provides a credit based on a comparison of the

[104] Exh. No. 32 at 7: 13-21 (Furman).

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value of PacifiCorp's hydro resources to the Company's thermal resources.[105/] This is an improvement over the Protocol, but it still inappropriately assigns all costs of the hydro resources to Pacific Northwest customers, while not adequately valuing the corresponding hydro benefits.[106/] Specifically, the Revised Protocol does not include the load following or dynamic overlay (spinning reserve) benefits of the Company's hydro resources. ICNU recommends that the Commission adopt a requirement that the benefits of the Company's hydro system be allocated to the Western Control Area on the basis of an embedded cost differential that will include load following and spinning reserves.[107/]

42 In addition, the Revised Protocol provides a Mid-Columbia ("Mid-C") allocation that is beneficial to Washington customers. However, it does not provide any specific commitments regarding the permanency of either the Mid-C allocation or the Hydro Endowment. As a result, it leaves open the possibility that other states will abandon this methodology in the future, as the Utah Public Service Commission ("UPSC") did with respect to the Modified Accord in 1998. The OPUC Staff recognized this lack of permanency and entered into a stipulation with the Company that sought to create a more durable Hydro Endowment.[108/] ICNU recommends that the Commission condition approval of the Revised Protocol on ensuring that customers permanently receive the benefits of the Pacific Northwest hydro resources.[109/]

105/ Exh. No. 401C at 57: 21 – 58: 2 (Falkenberg); Exh. No. 428C at 45 – 46 (Falkenberg).
106/ Exh. No. 401C at 57: 21 – 58: 2 (Falkenberg); Exh. No. 428C at 45 – 46 (Falkenberg).
107/ Exh. No. 428C at 77 – 78 (Falkenberg).
108/ Exh. No. 80 (Stipulation in OPUC Docket No. UM 1050).
109/ Exh. No. 428C at 77 – 78 (Falkenberg).

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ii. Structural Protections Are Necessary to Protect Against Cost Shifting Under the Revised Protocol

43 Another drawback of both the Original and Revised Protocols is that they do not provide structural protections against the costs of load growth in Utah.[110/] Moreover, adoption of either the Original or Revised Protocol would provide the Commission with no ability in future rate cases to address any cost-shifting issues through a disallowance. Instead, the Commission's determinations on new resources would be confined to whether a particular resource is prudent. Conditions should be adopted to enable the Commission to address cost-shifting issues.

44 PacifiCorp's Eastern Control Area, and Utah in particular, are placing the most growth pressure on the system.[111/] This concern, in part, led Staff to propose the Control Area methodology and Public Counsel to propose its Situs methodology. PacifiCorp has acquired or is acquiring many expensive new resources to serve load growth in the Eastern Control Area.[112/] In addition, PacifiCorp expects the trend in Utah load growth to continue in the future.[113/] Under these circumstances, the Commission should not adopt a permanent allocation methodology for Washington, unless it imposes appropriate conditions to address cost shifting.

45 Finally, the provisions in the Revised Protocol that call for additional study of the cost-shifting problem do not provide Washington customers with sufficient protection. This measure is preferable to the Original Protocol, but it provides little

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110/ Exh. No. 401C at 67: 17-18 (Falkenberg); Exh. No. 428C at 37: 17-18 (Falkenberg).

111/ Exh. No. 401C at 55: 19-23, 67: 7 – 71: 8 (Falkenberg); Exh. No. 428C at 37: 1 – 40: 16 (Falkenberg); Exh. No. 581 at 23: 9-16, 62 – 63, 78 – 83 (Buckley); Exh. No. 583 (Buckley).

112/ Exh. No. 401C at 66: 6 – 70: 2 (Falkenberg); Exh. No. 428C at 37: 1 – 40: 16 (Falkenberg).

113/ Exh. No. 401C at 66: 6 – 70: 2 (Falkenberg); Exh. No. 428C at 37: 1 – 40: 16 (Falkenberg).

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assurance that any structural protections will be developed and implemented. This issue is not significant if the Commission adopts the Revised Protocol as an interim methodology, but the Commission should ensure that actual structural protections are put in place before approving a permanent cost allocation methodology.

iii. Rate Credit and Mitigation Measures Are Necessary to Ensure that Customers Are Not Harmed

46 The Revised Protocol also fails to provide any assurance that Washington customers will benefit from the new methodology or that rates will not deviate dramatically under the new allocation from the allocation currently in place. In Utah, however, PacifiCorp entered into a stipulation that provides rate mitigation measures associated with implementation of the Revised Protocol.[114/] These measures place hard rate caps on Utah rates under the Revised Protocol as compared to the Rolled-In methodology.[115/] The Commission should implement similar measures in Washington to protect against any significant increase in rates based upon implementation of the Revised Protocol.

3. If the Commission Authorizes a Rate Increase, It Should Adopt the Revised Protocol and Order Conditions to Benefit Customers

47 Adopting the Revised Protocol is not the optimal outcome with respect to allocation issues in this proceeding, and Mr. Falkenberg believes Hybrid to be a better solution for Washington customers.[116/] Nevertheless, ICNU is willing to support the Revised Protocol, with ICNU's proposed conditions, in order to put in place an allocation

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114/ Exh. No. 79 (Stipulation in UPSC Docket No. 02-035-04).
115/ Id.
116/ TR. 538: 2 – 539: 12 (Falkenberg).

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methodology that benefits Washington customers and in recognition of the value of having a consistent inter-jurisdictional cost allocation methodology among the states. Although the Revised Protocol is not perfect, it would be a workable methodology with the conditions described by Mr. Falkenberg.

48 In summary, if the Revised Protocol is adopted, the Commission should impose the following conditions. First, PacifiCorp customers should receive the appropriate value for the load following and dynamic overlay benefits of the Company's hydro resources and ensure that customers will continue to receive those benefits if another jurisdiction abandons the Revised Protocol in the future. Second, some measure is needed to address cost-shifting. This could be accomplished by adopting Mr. Falkenberg's MSP adjustments and allowing parties to challenge costs resulting from Utah load growth in future proceedings. Third, the Commission should adopt rate mitigation measures to ensure that customers benefit from the Revised Protocol. Fourth, ICNU recommends that the Commission adopt conditions that allow the Commission to revisit the Revised Protocol to adopt changes approved by other states or in the event that ScottishPower sells, merges, or otherwise transfers PacifiCorp.[117/] Finally, the Commission should order PacifiCorp to recalculate its revenue requirement utilizing the Revised Protocol.[118/]

117/ Exh. No. 428C at 77 (Falkenberg).
118/ TR. 636: 20 – 637: 13 (Falkenberg).

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D. The Settlement Does Not Account for Adjustments Advocated by Non-Settling Parties

49 The Settlement adopts certain adjustments proposed by Staff, but it virtually ignores the revenue requirement adjustments proposed by ICNU and Public Counsel,[119/] including adjustments pertaining to the Eastern Control Area resources and MSP adjustments regarding the Protocol.[120/] In place of the revenue requirement adjustments proposed by Public Counsel and ICNU, the Settlement includes an "unspecified ICNU/Public Counsel adjustment[]" of just $600,000.[121/] This sum is not directed at any specific ICNU or Public Counsel adjustments, nor does it adequately represent the value of ICNU and Public Counsel's adjustments, which total at least $15.8 million. As a result, the Settlement is only a compromise of the disputes between PacifiCorp and Staff.[122/]

50 Adopting the Settlement without incorporating ICNU's adjustments would be contrary to the public interest and inconsistent with Commission precedent, because it would allow PacifiCorp to recover costs that are non-recurring, imprudent, and do not benefit ratepayers. The Commission has previously removed costs it considered non-recurring, one-time expenses that a utility is not likely to experience again during the term of the proposed rates.[123/] Similarly, ratepayers are not responsible for any costs or

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[119/] TR. 122: 10-21 (Schoenbeck).

[120/] Id. at 122: 13-15 (Schoenbeck), 535: 15-23 (Falkenberg).

[121/] Exh. No. 3 at Attachments A, B (Settlement).

[122/] *See*, *e.g.,* Exh. No. 563 (Staff Response to ICNU DR No. 1.8); TR. 349: 7-16 (Omohundro) (Settlement meeting "intended to discuss certain issues in the Staff's case")

[123/] WUTC v. Avista Corp., Docket Nos. UE-991606 and UG-991607, Third Suppl. Order, ¶¶ 205-207 (Sept. 29, 2000).

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expenses that were imprudent or the result of Company errors.[124] Finally, regardless of prudence, all costs and expenses that do not benefit ratepayers or were incurred to benefit shareholders should be removed from rates.[125]

51 In addition to the reductions in the Settlement, the evidence in this proceeding demonstrates that approximately $8.9 million in ICNU revenue requirement adjustments, and at least $6.9 million in Public Counsel revenue requirement and cost of capital adjustments, are appropriate. Adopting these adjustments along with the adjustments in the Settlement would completely offset the Settlement rate increase. Further, if the Commission elects to utilize the Revised Protocol, the result would likely be an overall rate reduction. Below is a summary of ICNU's proposed adjustments.

1. Additional Adjustments Must Be Made to the Costs of the Company's Eastern Control Area Resources

52 PacifiCorp's rates will include inflated costs if the Commission fails to make adjustments related to the Eastern Control Area resources. As explained above, the Settlement virtually ignores power cost adjustments regarding the Eastern Control Area because Staff did not review these resources.[126] Mr. Falkenberg carefully reviewed the Company's overall power costs, including resources in the Eastern Control Area, and demonstrated that PacifiCorp's power costs have been inflated due to faulty modeling and the failure to remove nonrecurring and imprudent costs.[127]

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[124] *See* Re Puget Sound Energy, Inc., Docket No. UE-031725, Order No. 14 at ¶ 93 (May 13, 2004).

[125] U.S. West v. WUTC, 134 Wn. 2d 74, 126, 949 P.2d 1337 (1997); WUTC v. Avista Corp., Docket Nos. UE-991606 and UG-991607, Third Suppl. Order at ¶¶ 239-40 (Sept. 29, 2000).

[126] *See* Exh. No. 1 at 15: 11-20 (Braden et al.); Exh. No. 3 at ¶ 10(c) (Settlement); Exh. No. 581 at 9: 5-15, 65: 10 – 71: 5, 85 – 97, 117: 10-15 (Buckley); TR. 338: 10 – 339: 2, 340: 1 – 341: 3 (Braden).

[127] Exh. No. 401C at 2 – 51 (Falkenberg).

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53 While the Settlement contains a number of adjustments, few relate to the Eastern Control Area. Attachment B to the Settlement reduces PacifiCorp's net power costs by $20.9 million to $534.1 million.[128] However, of the $20.9 million in power cost reductions in the Settlement, only $2.3 million are related to Eastern Control Area resources.[129]

54 The unreasonableness of the $534.1 million of net power costs proposed in the Settlement is demonstrated by the fact that the Company recently settled its 2003 Utah rate case based on net power costs of $512 million, which is more consistent with Mr. Falkenberg's recommended net power costs in this proceeding.[130] Notably, the Utah rate proceeding utilized the same test year as this proceeding.[131] Mr. Falkenberg's adjustments to the Company's Eastern Control Area resources include the market cap adjustments, the WAPA contracts, the Gadsby project, certain long-term contract adjustments, and numerous extraordinary or imprudent outages, including the Hunter Unit 1 outage.

a. The Settlement Ignores the Market Cap Adjustment for Eastern Control Area Resources

55 Although Staff and the Company agreed to a market cap adjustment for the Bridger unit, a coal-fired Western Control Area resource, they failed to make the same adjustment for coal-fired resources in the Eastern Control Area. The market cap adjustment corrects an understatement in the Company's GRID study of the generation

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128/ Exh. No. 3 at Attachment B (Settlement).
129/ Id.
130/ Exh. No. 162 (PacifiCorp Response to ICNU DR No. 13.5); *see also* Exh. No. 401C at 5 – 6 (Falkenberg).
131/ Exh. No. 401C at 5 – 6 (Falkenberg).

from the Company's coal plants.[132] As explained by Mr. Falkenberg, however, the market cap adjustment is not control area specific.[133] Thus, there is no rationale to apply the market cap adjustment to just one of the Company's coal fired resources.[134]

b. PacifiCorp Overestimated Its Outage Rates

56 An increase in outages of PacifiCorp's thermal generators, a majority of which are Eastern Control Area resources, has contributed significantly to the increase in power costs since the Company's last general rate case.[135] PacifiCorp's outage rates have increased by 20 percent, increasing power costs by $20.9 million on a total company basis.[136] Mr. Falkenberg demonstrated that much of this increase is related to imprudent, "highly unusual and clearly non-representative" outages.[137]

57 The Company included the most costly outage in recent memory, the 2001 Hunter outage, in its GRID study, even though the outage was "a catastrophic, one-time event . . . [that] had a devastating effect on PacifiCorp's power costs."[138] Under the terms of the Settlement, which adopts the Company's modeling, such a catastrophic event is presumed to occur once every four years.[139] A more realistic assumption, however, is to assume that such an outage will not occur in the near future.[140] Moreover, the Commission has not reviewed the prudence of the outage, and the Company has failed to present any evidence on this topic in this case. Finally, the Company has made

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132/ Exh. No. 401C at 29: 1 – 32: 8 (Falkenberg); Exh. No. 581 at 142: 7 – 144: 11 (Buckley).
133/ Exh. No. 401C at 29: 1 – 32: 8 (Falkenberg).
134/ *See* Exh. No. 581 at 9: 5 – 15, 65 – 71, 85 – 97, 117: 8-15 (Buckley).
135/ Exh. No. 401C at 33: 3-4 (Falkenberg).
136/ Id. at 33: 6-16 (Falkenberg).
137/ Id. at 33: 10 – 43: 12 (Falkenberg).
138/ Id. at 34: 16 – 35: 2 (Falkenberg); TR. 549: 10-23 (Falkenberg).
139/ TR. 587: 5-12 (Falkenberg).
140/ Exh. No. 401C at 34 – 36 (Falkenberg).

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adjustments in other states to exclude the Hunter 1 outage from base rates.[141] There is no reason not to make the same adjustment in Washington.

58 Mr. Falkenberg also established that it would be inappropriate to include the outage rates for the Company's new combustion turbines ("CTs") that occurred during initial operation and testing of these units because they are not expected to reoccur.[142] Moreover, outages that the Company has admitted were imprudent, such as the Jim Bridger Unit 4 outage, should be excluded.[143] Finally, the evidence demonstrates that PacifiCorp inappropriately included in its power cost study several abnormal or catastrophic outages that have not been pro-formed out[144] and minor outages that were caused by errors of the Company's personnel or contractors.[145]

c. PacifiCorp Failed to Impute Revenues from the Imprudent WAPA Wheeling Contracts

59 The Commission should reduce PacifiCorp's revenue requirement by imputing revenue from the Company's non-compensatory wheeling contracts with WAPA.[146] These contracts were imprudent when signed because they failed to include a process to compensate the Company for increasing costs of service.

60 In 1962, Utah Power and Light Company ("Utah Power") entered into a fixed-rate, 80-year contract to wheel power for what became WAPA.[147] Later, Utah

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141/ Oregon (Docket Nos. UE 134, UE 147), Utah (Docket No. 03-2035-02), and Wyoming (Docket No. 20000-ER-02-184).
142/ Exh. No. 401C at 37: 3-21 (Falkenberg).
143/ Id. at 38: 1 – 43: 12 (Falkenberg).
144/ Id. at 41: 11 – 42: 2 (Falkenberg).
145/ Id. at 42: 3 – 43: 12 (Falkenberg).
146/ Exh. No. 425 (Falkenberg Adjustments Still in Dispute); Exh. No. 215 (PacifiCorp Response to ICNU DR No. 1.80).
147/ Exh. No. 401C at 50: 1-6 (Falkenberg).

Power bought the transmission system of CP National Corporation, acquiring another wheeling contract with WAPA.[148] The wheeling rate for these contracts (the "Wheeling Contracts") was set at $4.20 per kilowatt-year and did not include any significant escalation methodology to compensate the Company for increasing costs.[149] In 1987, PacifiCorp and WAPA renegotiated the Wheeling Contracts.[150] The revised Wheeling Contracts allowed for a two-tier pricing structure, allowing the last 100 MW of transmission service to be set according to a formula.[151]

61 The WAPA Wheeling Contracts are not compensatory compared to other standard wheeling rates charged by the Company. PacifiCorp previously acknowledged that the WAPA Wheeling Contracts are not compensatory and that FERC authorized the Company to increase a portion of those rates.[152] PacifiCorp's wheeling costs are much higher now, as are the wheeling rates of most utilities. It is a basic premise of utility service that the costs associated with that service increase over time. However, PacifiCorp admits that the WAPA contract is an 80-year fixed rate contract without significant escalator clauses.[153] A reasonable utility entering into a transmission contract should have anticipated this fact and incorporated a price adjustment based on the knowledge that such costs increase over time—it was imprudent for PacifiCorp not to do so.

148/ Id. at 50: 6-10 (Falkenberg).

149/ Id. at 50: 10-11 (Falkenberg); TR. 276: 17-24 (Anderberg).

150/ *See* Re PacifiCorp, FERC Docket No. ER01-1152-000, WAPA Motion to Intervene and Protest (Feb. 21, 2001).

151/ Id.

152/ PacifiCorp, 99 FERC ¶ 61,026 (Apr. 10, 2002); PacifiCorp Revision to PacifiCorp's Rate Schedule FERC No. 262, FERC Docket No. ER01-1152-000 (Jan. 30, 2001).

153/ TR. 276: 17-24 (Anderberg).

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62 Other Commissions have required PacifiCorp to impute the revenue for the WAPA Wheeling Contracts.[154/] For the past 21 years, the UPSC has found the wheeling contracts to be non-compensatory and ordered that revenues be imputed based on the then-current FERC wheeling rate.[155/] In 2001, the OPUC reduced PacifiCorp's revenue requirement to offset the WAPA contract due to concern about Oregon "retail customers subsidizing contracts" like the WAPA contract.[156/] ICNU suggests that the WUTC should impute revenues under the WAPA contract based on PacifiCorp's current FERC wheeling rate.

d. PacifiCorp Did Not Account for the Benefits It Received from the Gadsby Project

63 PacifiCorp obtained a $7.5 million concession from General Electric ("GE") when the Company negotiated the Gadsby CT purchase that is not reflected in the rate base in this proceeding.[157/] Under the agreement with GE, this credit was realized as a waiver of rental fees, rather than a reduction to the cost of the project.[158/] By structuring the credit in this manner, the Company retained the benefit for its shareholders rather than its customers.[159/] In contrast, if PacifiCorp had structured the concession "as a reduction in price, then customers would have been better off for the next 25 years. Unfortunately, that wasn't done. It was a concession that was obtained in a way that only helped PacifiCorp's shareholders . . . ."[160/] ICNU requests the

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154/ Exh. No. 401C at 50 (Falkenberg); TR. 277: 4-9 (Anderberg).
155/ Re PacifiCorp, UPSC Docket No. 99-035-10, Report and Order at 23 (May 24, 2000).
156/ Re PacifiCorp, OPUC Docket No. UE 116, Order No. 01-787 at 36-38 (Sept. 7, 2001).
157/ Exh. No. 401C at 48: 4-8 (Falkenberg).
158/ Id.
159/ Id. at 48: 8-9 (Falkenberg).
160 TR. 596: 6-13 (Falkenberg).

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Commission offset the Company's rate base because the Company had a conflict of interest in its negotiation for this concession. Washington ratepayers are entitled to the credit that PacifiCorp received for this high cost resource.[161]

e. PacifiCorp Inappropriately Failed to Impute the Benefits of the Company's Long-Term Transactions to Ratepayers

64 PacifiCorp used the unproven and highly speculative Black-Scholes model to evaluate the Morgan Stanley and Sempra call options and the West Valley lease. This method assigns an "option value" to each resource, which forms the basis of the Company's determination to enter into the contract. Although PacifiCorp models all of the costs of these resources in its GRID study, it fails to include the "option values" that initially led the Company to select those contracts.[162] The Company also fails to impute the benefits of the System Integrity Clause of the P4 Production Contract, but it includes the transaction's costs. In order to achieve proper balancing of costs and benefits, the option value of the Morgan Stanley and Sempra contracts and the West Valley lease, and the additional power cost savings under the P4 Production Contract, must be imputed to the Company's Washington ratepayers.

2. PacifiCorp Withheld the Benefits of the BPA Settlement From Washington Ratepayers

65 As a result of a faulty meter, PacifiCorp mistakenly delivered power to BPA between November 16, 2000, and April 4, 2001, during the western power crisis.[163] As compensation for the mistaken delivery, BPA and the Company agreed that BPA

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[161] Exh. No. 401C at 48: 1 – 49: 19 (Falkenberg); Exh. No. 425 (Adjustments Still in Dispute).
[162] Exh. No. 401C at 22: 18 – 23: 1 (Falkenberg).
[163] Exh. No. 401C at 10: 6-7 (Falkenberg).

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would deliver 100 megawatts ("MW"), or 41,600 MW hours ("MWh"), of firm energy in July and August 2003 and 50 MW, or 21,600 MWh, of firm energy in October 2003.[164/] The Company's revenue requirement should be reduced by Washington's share of the BPA settlement amount.

66 Inclusion of the BPA settlement amount is proper because all other short-term contracts, including those that terminated before the end of the pro forma period, are included in the Company's Washington rates.[165/] Although the Company normally inputs all known short-term firm transactions executed prior to the filing of the rate case into its GRID study, PacifiCorp failed to include the power resulting from this settlement.[166/] As Mr. Falkenberg stated, "[t]he Company has made it a practice of including all of the actual short-term firm transactions."[167/] There is no reason why the BPA settlement "should be excluded and the others included."[168/]

3. A Normalized Four-Year Approach to Steam Maintenance Expense Will More Accurately Reflect Future Conditions

67 PacifiCorp calculated its steam maintenance expenses for purposes of this proceeding using the actual costs booked to FERC accounts for the period of April 2002 through March 2003.[169/] PacifiCorp's proposal violates the principle that test year costs should be representative of those that will be incurred when rates are in effect. This

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164/ Id. at 10: 7-12 (Falkenberg).
165 Id. at 13: 9-19 (Falkenberg).
166/ Id. at 8: 15-21, 10: 1-3 (Falkenberg).
167/ TR. 573: 8-10 (Falkenberg).
168 Id. at 573: 10-13 (Falkenberg).
169/ Exh. No. 461C at 4: 14-15 (Schoenbeck).

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principle requires normalization of test year costs to exclude any extraordinary events and other nonrecurring costs.[170]

68 PacifiCorp's proposed one-year period is not representative of the Company's steam expenses for an average year because the total number of overhaul days for 2003 was extremely high compared to other years.[171] The overall 2003 maintenance expense is "substantially more than the maintenance expense" in 2000, 2001, 2002, 2004, or 2005.[172] Further, because major overhauls of large thermal plants are scheduled once every four years, the use of one historical year to forecast steam maintenance expenses does not take into account the non-uniform or long-term cyclical nature of thermal plant maintenance.[173] Mr. Schoenbeck explained:

> [T]he basic notion is [the Company doesn't] have major overhauls on all the units every year, so it's hard to focus on one year. That's why I believe [the Commission] need[s] to look at a series of years, just like many other utilities do on the West Coast, and PacifiCorp did not.[174]

Adoption of the four-year historical average will correct this problem and reduce the Company's forecasted steam maintenance expenses by $861,000 on a Washington basis.[175]

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[170] 1 Leonard Saul Goodman, The Process of Ratemaking 287 (1998); WUTC v. Avista Corp., Docket Nos. UE-991606 and UG-991607, Third Suppl. Order at ¶¶ 205-07 (Sept. 29, 2000).
[171] Exh. No. 461C at 5: 15-17 (Schoenbeck).
[172] Id. at 5: 6-7 (Schoenbeck); TR. 152: 3-12 (Schoenbeck).
[173] Exh. No. 461C at 4: 5-7, 5: 12-15 (Schoenbeck).
[174] TR. 148: 21 – 149: 1 (Schoenbeck).
[175] Exh. No. 461C at 3: 1-11 (Schoenbeck).

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4. The Company's Outside Expenses Have Been Significantly Inflated and Are Not Representative of Future Conditions

69 Mr. Schoenbeck demonstrated that it is appropriate to exclude those outside services costs that are associated with non-utility functions or non-regulated affiliates, provide personal benefits to employees, do not provide clear benefits to ratepayers, or are related to expenses that are recovered under other regulatory mechanisms.[176/] The following specific outside expenses should be excluded from the Company's revenue requirement: 1) litigation expenses concerning the Snake River Valley Electric Association lawsuit; 2) MSP expenses; 3) income tax preparation expenses for certain PacifiCorp employees; and 4) certain accounting expenses.

70 Litigation expenses concerning the Snake River Valley Electric Association lawsuit totaled $1.7 million, or 66 percent of all of PacifiCorp's non-recurring litigation expenses.[177/] The Commission has previously removed the cost associated with uncommon or nonrecurring litigation that was not expected to be repeated in the future.[178/] Due to the unique, non-recurring nature of this particular expense, and the magnitude of the expenses relative to other cases, the costs of the Snake River case should be excluded from the normalized outside services expenses in the Company's rates.[179/] Mr. Schoenbeck's litigation expense adjustment also is consistent with an overall reduction of approximately $1 million in legal expenses from 2004 to 2005[180/] and

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176/ Id. at 14: 7-13 (Schoenbeck).
177/ Id. at 15: 3-8 (Schoenbeck).
178/ WUTC v. Avista Corp., Docket Nos. UE-991606 and UG-991607, Third Suppl. Order at ¶¶ 200-07 (Sept. 29, 2000).
179/ Exh. No. 461C at 15 (Schoenbeck).
180/ TR. 169: 17 – 171: 14 (Schoenbeck).

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PacifiCorp's plans to reduce outside legal expenses by increasing its internal legal department.[181/]

71 The MSP process was a lengthy process intended to achieve a common basis of regulatory rules and cost recovery among PacifiCorp's six jurisdictions. PacifiCorp undertook this process to benefit shareholders rather than ratepayers.[182/] In addition, as evidenced by the Settlement, the parties in Washington have not reached agreement concerning the appropriate allocation methodology in this state. Thus, the customers have not benefited from the process because the "MSP expenses do not offer any future or ongoing benefits to ratepayers."[183/] Moreover, the MSP process is a non-recurring event that should be excluded from the Company's rates.[184/] All outside services costs associated with the MSP should be excluded from the Company's revenue requirement.[185/]

72 Expenses for certain income tax preparation fees and tax payments also should be excluded from the normalized outside services expenses. These expenses include "tax services to PacifiCorp employees who became subject to the jurisdiction of tax authorities outside of the individual's home country."[186/] Washington ratepayers

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181/ Exh. No. 224 (PacifiCorp Response to ICNU DR No. 11.1).

182/ *See* Exh. No. 32 at 3 – 4 (Furman); TR. 163: 19 – 165: 18-21 (Schoenbeck).

183/ Exh. No. 461C at 16: 14 (Schoenbeck).

184/ TR. 161: 20 – 163: 7 (Schoenbeck); Exh. No. 461C at 16: 8-17 (Schoenbeck).

185/ If the Commission accepts Mr. Schoenbeck's outside services adjustment related to the MSP process, the costs associated with the "Hive Down" program should also be removed because the "Hive Down" program is related to the overall MSP process. TR. 161: 7-17 (Schoenbeck); Exh. No. 204 at 9: 2-12 (Weston).

186/ Exh. No. 461C at 17: 18-20 (Schoenbeck).

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should not bear the costs of PacifiCorp's choice to provide its international employees free tax preparation services.[187/]

73 Finally, Mr. Schoenbeck established that certain accounting expenses should be excluded from normalized rates. Work products that are for the benefit of the corporate owner rather than the utility should not be included in Washington's rates.[188/] In addition, expenses related to the computing and filing of tax returns should be decreased because the Company recovers its tax costs through regulatory imputation.[189/] PacifiCorp alleged that these adjustments should be rejected because they may contain some "errors."[190/] However, any errors are due to the Company's failure to adequately identify its costs in this proceeding, despite the fact that the Company has provided more detailed explanations in past proceedings.[191/] More importantly, Mr. Schoenbeck reevaluated his overall accounting adjustment and found that "it is still entirely appropriate."[192/] In addition, the reasonableness of Mr. Schoenbeck's adjustment is illustrated by the dramatic drop in the Company's outside services fees from $52 million in 2002 to $37 million in 2004.[193/]

187/ Id. at 17: 15 – 18: 12; *see* Exh. No. 221 (PacifiCorp Response to ICNU DR No. 9.14).
188/ WUTC v. Avista, Docket Nos. UE-991606 and UG-991607, Third Suppl. Order at ¶¶ 239-40; Exh. No. 461C at 18-22 (Schoenbeck).
189/ Exh. No. 461C at 20: 2 – 23: 6 (Schoenbeck).
190/ Exh. No. 204 at 10: 4-18 (Weston).
191/ TR. 172: 15 – 174: 7, 185 – 187 (Schoenbeck).
192/ Id. 189: 2-6 (Schoenbeck).
193/ Exh. No. 214 (Excerpt of FERC Form No. 1); TR. 187: 20 – 189: 6 (Schoenbeck).

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E. There Are No Disincentives Regarding Demand Side Management In Washington and Adopting the Settlement Proposal to Pursue Decoupling Creates an Expensive and Unnecessary Proceeding

74 The Settlement recommends that the Commission "address the issue of whether it is in the public interest to investigate a true-up mechanism designed to eliminate financial disincentives associated with the Company's demand-side initiatives . . . ."[194] Such an investigation is unwarranted because the Company currently has a system benefit charge ("SBC") in Washington that allows it to recover all of its prudently incurred demand side management ("DSM") costs, and the record does not demonstrate that there are any disincentives preventing the Company from investing in DSM.[195]

75 PacifiCorp's investments in DSM increased dramatically under the SBC, from $2.8 million in 2001 to $6.5 million in 2002.[196] There is no evidence that PacifiCorp has failed to make DSM investments due to any alleged financial disincentives.[197] In addition, there is no evidence that Staff evaluated whether there are any actual financial disincentives to DSM or whether a true-up or decoupling mechanism like NRDC discussed in this proceeding would work in Washington.[198] Finally, a previous PacifiCorp true-up mechanism in Oregon that had been advocated by NRDC increased rates for all customer classes and was abandoned after opposition by ratepayers and the OPUC Staff.[199] Staff admitted that they had not reviewed any evidence or results from the Oregon program to determine whether decoupling would be in the best interest

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194/ Exh. No. 3 at ¶ 13 (Settlement).
195/ Pacific Power & Light, Rate Schedule 191 (System Benefit Charge).
196/ WUTC Open Meeting Minutes at 1-2 (Feb. 15, 2002).
197/ *See* TR. 232: 11 – 233: 7 (Furman).
198/ *See* TR. 641: 17-21 (Braden).
199/ *See* TR. 230: 22 – 231: 24 (Furman).

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of customers in Washington.[200/] Thus, there is an insufficient record to initiate an investigation into this issue.

F. The Commission Should Not Defer or Amortize Any Costs Associated with the Trail Mountain Mine or the Environmental Remediation Program

76 There is an inadequate record upon which to grant the Company's request to defer and amortize costs associated with the Trail Mountain mine closure ("Trail Mountain") or the Company's environmental remediation program ("Environmental Remediation"). The Settlement recommends that the Commission grant the deferrals and amortize these costs.[201/] The deferred accounting requests related to Trail Mountain and Environmental Remediation are separate dockets that have not been formally consolidated with this proceeding, and the review of those costs should occur in those separate proceedings.[202/] In addition, any recovery of deferred amounts should be postponed until the Commission adopts an inter-jurisdictional cost allocation methodology to determine the appropriate amount, if any, of these costs that should be allocated to Washington.

77 Staff did not conduct a comprehensive review of the costs associated with Trail Mountain or Environmental Remediation. Staff has not prepared any documents, analysis, or other memoranda on these issues.[203/] For example, Staff did not analyze the prudency of the Trail Mountain costs. In fact, Staff initially opposed the Company's proposal because the Trail Mountain "costs are directly related to Eastern Control Area

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200/ *See* TR. 641: 17-21 (Braden).
201/ Exh. No. 3 at ¶ 12 (Settlement).
202/ TR. 133: 6 – 140: 21 (Schoenbeck), 343: 15-18 (Omohundro).
203/ TR. 343: 18 – 344: 7 (Schooley).

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power supply."[204/] At a minimum, the Commission should ensure that costs not associated with the Company's portion of Trail Mountain are removed from PacifiCorp's deferral request.[205/]

78 The Trail Mountain costs also are problematic because the Settlement does not make clear whether the Company will be able to amortize costs that were incurred prior to the date of the Company's deferral application. The Commission is empowered to set rates on a prospective basis, and it would violate the rule against retroactive ratemaking to authorize a deferred account for costs incurred prior to the time the utility requests the deferral.[206/] Despite the fact that the Trail Mountain Mine deferral request was filed on October 10, 2003, the Settling Parties "request that the Commission approve deferral of these costs as of April 1, 2001" and that "amortization commenc[e] with the establishment of the deferral, April 1, 2001 . . . ."[207/] Although Staff and the Company asserted at hearing that only half the Trail Mountain costs would be amortized and included in rates, this is not clear from the terms of the Settlement.[208/] The Commission should clarify that it will not grant a deferral or amortization of any amounts incurred prior to the date of a deferral application.

204/ Exh. No. 641 at 12: 20-21 (Schooley); *see also* TR. 681: 24 – 682: 22 (Schooley).

205/ TR. 135: 5 – 140: 21 (Schoenbeck).

206/ RCW § 80.28.020; State ex rel. Standard Oil Co. of Cal. v. Dep't of Pub. Works, 185 Wash. 235, 238-39, 53 P.2d 318, 319-20 (1936); Re Puget Sound Energy, Inc., Docket No. UE-010410, Order Denying Petition, ¶ 7 (Nov. 9, 2001); Re PacifiCorp, Docket No. UE-020417, Second Suppl. Order, ¶¶ 25-27 (Sept. 27, 2002).

207/ Re PacifiCorp, Docket No. UE-031657, Petition (Oct. 10, 2003); Exh. No. 3 at ¶ 12(b) (Settlement).

208 TR. 518: 16-21 (Schooley), 520: 1-6 (Omohundro); Exh. No. 3 at ¶ 12(b).

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G. PacifiCorp Has Not Justified An Interim Rate Increase

79 The Settling Parties recommend that, if the Commission conditionally approves the Settlement or approves a revenue requirement increase different than that recommended in the Settlement, PacifiCorp be authorized to increase rates $15.5 million as an "interim measure," subject to refund, pending the final outcome of the proceeding.[209/] There is no evidence that PacifiCorp is entitled to interim rate relief under the standard applied by this Commission. In addition, the Settling Parties have not presented any evidence or compelling argument that PacifiCorp should receive a larger rate increase on an interim basis if the Commission finds that a smaller rate increase is warranted.

80 Interim rate relief granted prior to the completion of a general rate case is an extraordinary remedy that is justified only when a utility can demonstrate that it is experiencing a financial emergency or other extreme need.[210/] In PNB, the Commission denied a request for emergency rate relief because the Commission concluded that there was "no significant evidence of service impairment" and drew six conclusions regarding interim rate relief.[211/] These conclusions have come to make up the PNB standard and have been consistently reaffirmed in subsequent Commission decisions.[212/]

209/ Exh. No. 1 at 21: 4-20 (Braden et al.); Exh. No. 3 at ¶ 14(d) (Settlement).

210/ WUTC v. Puget Sound Energy, Inc., Docket Nos. UE-011163 and UE-011170, Sixth Suppl. Order, ¶¶ 17-21 (Oct. 24, 2001); WUTC v. Pacific Northwest Bell Telephone Co., Cause No. U-72-30, Second Suppl. Order at 13 (Oct. 10, 1972) ("PNB").

211/ Id. at 13 – 14.

212/ *See*, *e.g.,* WUTC v. Alderton-Mc Millan Water System, Inc., Docket No. UW-911041, First Suppl. Order (June 3, 1992); WUTC v. Puget Sound Energy, Inc., Docket Nos. UE-011163 and UE-011170, Sixth Suppl. Order, ¶¶ 32-40 (Oct. 24, 2001).

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81 There is no dispute that PacifiCorp is not experiencing financial conditions sufficient to warrant interim rate relief under the PNB standard.[213/] PacifiCorp and Staff acknowledge that they "aren't asking for interim rate relief as it's traditionally defined by this Commission."[214/] However, neither the Settlement nor the supporting testimony identifies the legal basis or the factual grounds upon which the Settling Parties believe that their "interim measure" is warranted. Under these circumstances, there is no reason to grant the interim measures proposed by the Company.

IV. CONCLUSION

82 The Commission should reject the Settlement because it is inconsistent with both the Rate Plan and the Amending Order, and PacifiCorp has failed to prove that it is entitled to an increase in revenue requirement. However, if the Commission accepts the Settlement, the evidence in this proceeding demonstrates that the Commission should: 1) adopt the Revised Protocol, with Mr. Falkenberg's conditions, as an appropriate inter-jurisdictional cost allocation methodology; 2) adopt the additional revenue requirement and cost of capital adjustments proposed by ICNU and Public Counsel; 3) deny the request to defer and amortize costs associated with the Trail Mountain Mine and Environmental Remediation; 4) refuse to initiate a separate proceeding regarding any alleged DSM disincentives; and 5) reject the interim rate relief request.

213/ TR. 122: 6-20, 142: 2-5 (Schoenbeck), 348: 11-18 (Omohundro and Braden).
214/ TR. 348: 11-18 (Omohundro and Braden).

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DATED this 8th day of October, 2004.

Respectfully Submitted,

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