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STATE OF WASH.
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COMMISSION

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
)
Complainant,)
)
v.)
)
PACIFICORP d/b/a PACIFIC POWER &)
LIGHT COMPANY)
)
Respondent.)
.....)

DOCKET NO. UE-032065

BRIEF OF THE NATURAL RESOURCES DEFENSE COUNCIL

Dated: October 6, 2004

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BRIEF OF THE NATURAL RESOURCES DEFENSE COUNCIL

The Natural Resources Defense Council (NRDC) focused its testimony in this proceeding on one central proposition, which no other party has yet contested: Washington's regulatory status quo unintentionally undercuts the crucial energy-efficiency element of least cost planning, and the Utilities and Transportation Commission (WUTC) urgently needs to begin fixing the problem. Specifically, the Settlement Agreement points the way toward ensuring that PacifiCorp's ("the Company's") success in promoting cost-effective energy efficiency is not automatically harmful to shareholders. What is needed to start the process is a specific Commission finding that 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.

I. THE COMMISSION'S ORDER IN THIS PROCEEDING SHOULD ADOPT THE SETTLEMENT AGREEMENT, INCLUDING ITS INVITATION TO ADDRESS PACIFICORP'S FINANCIAL DISINCENTIVES FOR PROMOTING ENERGY EFFICIENCY.

NRDC joins Commission Staff and the Company in supporting the Settlement Agreement of August 27, 2004. The Settlement Agreement includes a section entitled "Removing Disincentives to Demand-Side Initiatives":

The Parties recommend that the Commission's order in this proceeding 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, based on a review of NRDC's testimony and other information in the record. Upon such a finding, the Company will initiate discussions with Staff and interested parties to review the effects of demand-side investments on the recovery of fixed costs and other potential disincentives to such investments by the Company, and to address the potential structure of a true-up mechanism that would make recovery of these costs independent of retail

electricity sales. After such discussion, the Company may propose a true-up mechanism for consideration by the Commission at the earliest practicable time.¹

This section of the Settlement Agreement invites a Commission finding regarding financial disincentives for demand-side initiatives, and proposes a Company-led inquiry and discussion process that would follow “upon such a finding.” The next section reviews the abundant support for “such a finding” in the record of this proceeding, which no party has challenged through either cross-examination or rebuttal testimony.

II. THE COMMISSION’S ORDER IN THIS PROCEEDING SHOULD INCLUDE A FINDING THAT 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.

The Settlement Agreement leaves open the question of how the Commission should “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.” NRDC’s testimony (Exh. No. 481), coupled with submissions from the Company, establishes the foundation for the following specific recommendations.

A. ABUNDANT, UNREBUTTED EVIDENCE IN THE RECORD DEMONSTRATES THAT A TRUE-UP MECHANISM IS NEEDED TO ELIMINATE FINANCIAL DISINCENTIVES TO THE COMPANY’S DEMAND-SIDE INITIATIVES.

The Company filing that launched this proceeding included CEO Judi Johansen’s acknowledgement that

[f]rom a least-cost planning perspective, the problem with current ratemaking practice is the linkage of utilities’ financial health to retail electricity throughput. Increased retail electricity sales produce higher fixed cost recovery and reduced

¹ Exh. No. 3, at 8:13 (Settlement Agreement).

sales have the opposite effect. To remove a conservation disincentive, we would propose that the parties agree to and the Commission endorse the adoption of a simple system of periodic true-ups to electric rates, designed to correct for the disparities between utilities' actual fixed cost recoveries and the revenue requirement approved by this Commission.²

NRDC's testimony provided extensive additional detail on the magnitude of this "conservation disincentive," including an uncontested "demonstration that a reasonably aggressive five-year energy efficiency program in its Washington service territory would automatically inflict almost \$19 million in losses on PacifiCorp's shareholders, regardless of the cost-effectiveness of the electricity savings."³ The good news from the NRDC testimony, however, is that the problem can be fixed with extremely modest annual true-ups in electricity rates, leaving current rate structures intact and avoiding the disruptive prospect of either higher fixed charges or disruptive rate instability: "the largest plausible annual impact of a true-up mechanism would be about two percent of retail rates: less than 1.5 mills per kilowatt-hour."⁴

NRDC's testimony also reviews in detail the experience of Washington, Oregon and other states with true-up mechanisms analogous to those proposed in this case. Washington in particular has concrete experience demonstrating that such mechanisms can remove disincentives to utilities' conservation investment,⁵ and Idaho recently "opened a proceeding to address financial disincentives for Idaho Power's energy efficiency investments and performance-based incentives tied to the utility's success in

² See Exh. No. 481, at 8-9 (Cavanagh). CEO Johansen's direct testimony on this point is reaffirmed explicitly in the Company's rebuttal testimony. See Exh. No. 32, at 18:4-9 (Furman).

³ Exh. No. 481, at 2:19-23 (Cavanagh).

⁴ Exh. No. 481 at 10:20-21 (Cavanagh); see also 11 for a detailed explanation of the basis for this conclusion.

⁵ Exh. No. 481 at 9:25-28 (Cavanagh); the NRDC testimony goes on (at 9-10) to discuss the Washington experience in detail, and to note that in approving a litigation settlement that ended Puget's true-up mechanism, the Commission "expressly reserved the right of all parties to bring forward in the future 'other rate adjustment mechanisms, including decoupling mechanisms . . . [and] similar methods for removing or reducing utility disincentives to acquire conservation resources'").

delivering cost-effective savings.”⁶ Interest in such mechanisms is reviving nationwide, as illustrated in the record by a rare joint proposal from NRDC and the Edison Electric Institute to the National Association of Regulatory Utility Commissioners.⁷

B. THE RECOMMENDED COMMISSION FINDING WILL LAUNCH THE MOST PROMISING APPROACH TO DESIGNING A PACIFICORP TRUE-UP MECHANISM FOR THE COMMISSION’S CONSIDERATION.

The process contemplated in Item 13 of the Settlement agreement is fully consistent with NRDC’s testimony, which recognizes that the design of a true-up mechanism requires resolution of several issues, “although each is straightforward and an abundance of analysis and experience shows that there is more than one reasonable solution.”⁸ The NRDC testimony closes with a specific recommendation: the Commission should “make the basic policy decision that a true-up mechanism is in the public interest” and “provide a reasonable period (e.g., three to six months) for the Company and interested parties to seek as much consensus as possible on design recommendations for the Commission’s consideration.”⁹ The Company has reaffirmed in its Rebuttal Testimony that it “is interested in implementing a decoupling mechanism designed to remove disincentives to investment in cost-effective demand-side resources” and that “if the Commission provides the necessary policy guidance, we would welcome the opportunity to work with the parties to develop a decoupling mechanism for the Company that can be offered for the Commission’s consideration in a subsequent

⁶ Exh. No. 481 at 12:19-23 (Cavanagh) (citing Case No. IPC-E-03-13, Order No. 29505 (May 25, 2004)).

⁷ Exh. No. 481, Attachment 2 (Cavanagh).

⁸ Exh. No. 481 at 14:5-6 (Cavanagh). The issues themselves are summarized at 13:20-28.

⁹ Exh. No. 481 at 14:5-14 (Cavanagh).

proceeding.”¹⁰ And Item 13 of the Settlement Agreement confirms the willingness of the Company and the Commission Staff to undertake that effort if the Commission makes a finding that “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.”¹¹ The Commission’s final order should accept that offer with enthusiasm; proposed findings of fact and conclusions of law appear below.

III. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Proposed Finding of Fact: Lower retail sales associated with successful energy efficiency initiatives are likely to result in a reduced opportunity for the Company to recover its authorized fixed-cost revenue requirement, while increased retail sales will have the opposite effect.¹²

B. Proposed Conclusion of Law: 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. With the objective of designing and proposing a true-up mechanism for consideration by the Commission at the earliest possible time, the Company should initiate discussions with Staff and interested parties to review the effects of demand-side investments on the recovery of fixed costs and other potential disincentives to such investments by the Company, and to address the potential structure of such a true-up mechanism that would make recovery of these costs independent of retail electricity sales.¹³

¹⁰ Exh. No. 32 at 18:4-9 (Furman).

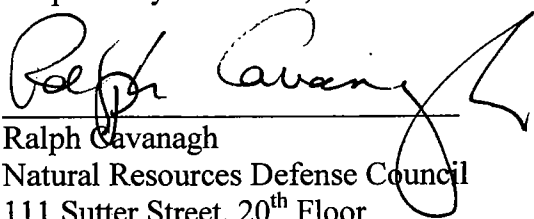
¹¹ Exh. No. 3 at 8 (Settlement Agreement).

¹² See, e.g., Exh. No. 481 at 2-3 & 6-7 (Cavanagh).

¹³ This language is taken almost verbatim from item 13 of the Settlement Agreement, “Removing Disincentives to Demand-Side Initiatives,” Exh. No. 3 at 8.

Dated: October 6, 2004

Respectfully submitted,

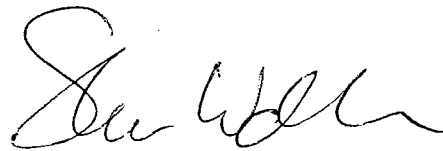
A handwritten signature in black ink, appearing to read "Ralph Cavanagh". The signature is written in a cursive style with a large, sweeping flourish at the end.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the **Brief of the Natural Resources Defense Council** upon all parties of record in this proceeding, by U.S. Air mail.

Dated at San Francisco, California this 6th day of October, 2004.



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