STOEL RIVES LLP
ATTORNEYS AT LAW

900 S.W. Fifth Avenue, Suite 2600
Portland, Oregon 97204
main 503.224.3380
fax 503.220.2480
www.stoel.com

JAMES M. VAN NOSTRAND
Direct 503.294.9679
jmvannostrand@stoel.com

November 3, 2004

ELECTRONIC AND OVERNIGHT MAIL
<records@wutc.wa.gov>

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and
Transportation Commission
1300 S Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: PacifiCorp
Docket No. UE-032065

Dear Ms. Washburn:

Enclosed for filing are an original and sixteen (16) copies of PacifiCorp's Motion for Clarification of Final Order by Conference in this matter.

Very truly yours,

James M. Van Nostrand
Counsel for PacifiCorp

JMV:jlf
cc: Service List

Oregon
Washington
California
Utah
Idaho

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT COMPANY, Respondent.	NO. UE-032065 MOTION FOR CLARIFICATION OF FINAL ORDER BY CONFERENCE

I. RELIEF REQUESTED

1 In its Order No. 06 Approving and Adopting Settlement Agreement Subject to Conditions; Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing, dated October 27, 2004 ("Order"), the Commission accepted, subject to conditions, the multi-party settlement offered by PacifiCorp, d/b/a Pacific Power & Light Company ("PacifiCorp" or "the Company"), Commission Staff, and Natural Resources Defense Council ("NRDC"). The Company appreciates the Commission's prompt and careful consideration of the Settlement Agreement, and the swift issuance of the Order.

2 The conditions imposed by the Order reject paragraphs 12.b and 12.c of the Settlement Agreement, and purport to recalculate the revenue requirement deficiency in a manner that effects "removal of the costs attributable to the issues addressed in those paragraphs." *Order at ¶ 77.* According to WAC 480-07-750(b), "[i]f the commission accepts a proposed settlement upon conditions not proposed in the settlement, the parties may seek reconsideration of the decision and the settling parties must within the time for reconsideration state their rejection of the conditions." PacifiCorp hereby states that it does not reject the conditions imposed by the

Commission in Order No. 6. The overall result produced by the Order is reasonable, and the Company accepts it. Certain aspects of the Order, however, appear to contain errors in calculation and to produce results inconsistent with enunciated principles. Therefore, pursuant to WAC 480-07-840, PacifiCorp requests that the Commission schedule an order conference for purposes of clarifying the meaning and requirements of paragraphs 63, 64, 77, and 87 of the Order.

II. BACKGROUND

3 The Order adopts and approves, *inter alia*, the multi-party Settlement Agreement, subject to conditions, authorizing the Company to increase its electric rates in Washington.

4 Paragraph 12.b of the Settlement Agreement, which is rejected by the conditions imposed in the Order, recommended that the Commission "issue an accounting order authorizing the Company to accumulate the $46.3 million reflecting the Company's unrecovered investment in Trail Mountain Mine and related mine closure costs" as of April 1, 2001. The parties to the Settlement Agreement further requested that the "Commission authorize five years as a reasonable period over which to amortize the costs associated with the Trail Mountain Mine closure, with amortization commencing with the establishment of the deferral, April 1, 2001, and ending March 2006." *Id.*

5 Paragraph 12.c of the Settlement Agreement—also rejected by the conditions imposed in the Order—recommended that the Commission "issue an accounting order authorizing the Company to record and defer costs prudently incurred in connection with its environmental remediation program, on an ongoing basis." The parties further requested that the Commission find that ten years is a reasonable period over which to amortize these environmental remediation costs. *Id.*

6 The Order explains the basis for these conditions as follows:

> In two instances, however, the settling parties ask us to expressly resolve underlying issues and to go beyond simply

> approving a level of costs to be included in rates. We refer here to the Settlement Agreement's provision concerning Trail Mountain and Environmental Remediation. With respect to these items, the Settlement Agreement proposes deferral accounting treatment without, in our judgment, providing adequate support for such treatment. The questions of the proper accounting treatment for these costs are currently before us in separate, unconsolidated dockets. (*footnote omitted*) Those proceedings provide an opportunity to air fully all questions that relate to proper accounting treatment and will set the stage for consideration of whether and how any deferred costs might be recovered in rates. *(footnote omitted)* Thus, in this Order, we preclude neither the requested accounting treatment nor the future recovery of these costs. We defer those decisions to the pending dockets and, if necessary, to a future rate proceeding. *Order at ¶ 63.*

7 Paragraph 64 of the Order states:

> In this proceeding, because we decline the treatment of Trail Mountain and environmental remediation costs proposed in ¶12.b. and ¶12.c. of the Settlement Agreement, we also require removal of the associated costs from the revenue requirement proposed by the settling parties. Thus, we will approve a revenue requirement of $15,057,000 instead of the $15.5 million proposed under the Settlement Agreement.[56]
>
> [56]*Exh. No. 4, pp. 7 (adjustment 5.3), 9 (adjustment 8.1).*

8 In Finding of Fact No. (7) at paragraph 77, the Order states:

> (7) The Commission's demurral of the requests in ¶¶ 12.b. and 12.c. of the Settlement Agreement and removal of the costs attributable to the issues addressed in those paragraphs from the proposed revenue deficiency of $15.5 million, results in a revenue deficiency of $15,057,000.

9 In Conclusion of Law No. (6) at paragraph 87, the Order states in part:

> (6) . . . The Commission should approve and adopt the Settlement Agreement as a reasonable resolution of the issues presented by its terms, subject to the condition that ¶¶ 12.b. and 12.c. of the Settlement Agreement are rejected and the costs attributable to the issues addressed in those paragraphs are removed from the proposed revenue deficiency of $15.5 million, resulting in a revenue deficiency of $15,057,000. *WAC 480-09-465; WAC 480-090-466.*

10 It is apparent from the Order that the intent was to remove the costs associated with these two items completely from the Company's revenue requirement and address them separately.

Paragraph 64 identifies the Commission calculated revenue requirement as $15,057,000 after adjustments to remove these two items. The footnote identifies Exhibit No. 4, pages 7 and 9 (the Company adjustments 5.3 (Trail Mountain) and 8.1 (Environmental Settlement)) as the references for the adjustments to the revenue requirement. The problem, however, is that the referenced adjustments do not capture all "the costs attributable to the issues addressed" in paragraphs 12.b and 12.c of the Settlement Agreement and erroneously remove costs that should remain in the stipulated results.

III. THE NEED FOR AN ORDER CONFERENCE

11 WAC 480-07-840 provides that a party may request an order conference "to clarify the meaning of a final order" and, specifically, to "correct patent error" or to "propose technical changes that may be required to correct the application of principle to data." The calculation of the revenue requirement implications of rejecting paragraphs 12.b and 12.c of the Settlement Agreement appear to involve patent error that should be examined in an order conference. Moreover, an order conference is necessary to consider the application of the principles enunciated in the Order to the corrected data.

A. The Revenue Requirement Implications Associated with Rejection of Paragraphs 12.b and 12.c of the Settlement Agreement.

1. Trail Mountain Closure Costs.

12 Footnote 56 of the Order refers to Company Adjustment 5.3 as the basis for calculating the revision necessary to remove all costs associated with paragraph 12.b of the Settlement Agreement, pertaining to Trail Mountain closure costs. Adjustment 5.3 adjusts the Company's revenue requirement for two items related to Trail Mountain Mine closure costs, namely the inclusion of the amortization of the costs in net power costs and the removal of joint owner-related costs and revenues. In the Company's actual results and accounting data, Trail Mountain is included in Deferred Debits as an asset and amortized to FERC account 501, Fuel Expense, with associated tax consequences treated as "Schedule M" items, deferred tax expense in FERC accounts 410 and 411 and deferred tax balances in FERC account 190. Since all of the actual fuel expense is removed and replaced by the Company's net power cost calculation, the Trail Mountain Mine-related expense amortization was eliminated and the Company's portion (*i.e.*, non joint owner) was added back to the Company's revenue requirement through adjustment 5.3.

13 The second component of adjustment 5.3 is to remove 14.5% of the Trail Mountain Closure costs associated with the mine joint owner's portion of the costs. An adjustment to FERC accounts 182 for the deferred costs removes the rate base component for the joint owner's portion. Joint owners have paid the Company for these costs and the revenue is booked to account 456. An adjustment was made to remove these components below the line. The adjustments related to the joint owners are correct as they stand and should not be included in any modification to remove Company-related Trail Mountain Mine costs.

14 These two adjustments, however, do not completely remove the impact of Trail Mountain Mine closure costs from the revenue requirement. In order to accomplish this objective, an adjustment is necessary to remove the amortization component included in adjustment 5.3 as well as additional adjustments to remove the tax impacts of Schedule M items (deferred tax impacts are eliminated due to adjustment 7.2) and the remaining Company portion of deferred costs in accounts 182 and 186. The tax impact associated with the deferral of the Trail Mountain Mine closure costs reduces the revenue requirement by an amount greater than the impact of the amortization of the costs and remaining investment balance; thus, the reversal of all aspects of the deferral of these costs produces an increase in the revenue requirement. The calculations shown in Attachment A show the correct calculation of the impacts associated with exclusion of this adjustment. In adjusting for the removal of any remaining balances of rate base, the calculation to determine the revenue requirement impact needs to be performed based on a "pre-tax" regulatory weighted average cost of capital.

2. *Environmental Remediation Costs.*

15 Paragraph 12.c of the Stipulation addresses the accounting for and recovery of costs associated with the survey, mitigation, etc. of environmental remediation programs that are underway at the Company. This relates to costs that the Company incurs on a regular basis for a number of ongoing environmental clean-up programs. The Company requested deferral and amortization of the costs over a ten year period. The costs have been included in actual results as a deferred expense in Account 182 and amortized to Account 925.

16 Footnote 56 of the Order cites the Company's adjustment 8.1 as the basis for the calculation to remove the revenue requirement impacts associated with environmental remediation. Adjustment 8.1 relates to an insurance settlement on environmental remediation projects. The Company received proceeds from an insurance carrier in a settlement agreement to release the insurer of all liability. The Company has treated the cash proceeds as a rate base deduction to benefit customers as customers have paid for the premiums included in expense. To adjust environmental costs, the actual expenses and deferred balances need to be removed from the case rather than adjustment 8.1, which should not be changed. The appropriate adjustment to reflect the removal of environmental costs is included in Attachment A.

3. *Overall Revenue Requirement Impacts*

17 Properly implementing the apparent intent of the Order results in an increase in the Company's revenue requirement above the amount recommended in the Settlement Agreement ($15.501 million). As noted above, this result is due to the significant impacts related to the flow-through treatment of the income taxes which offset the reduction of amortization expense and rate base deductions. With the adjustments, the revenue requirement change would increase to $15.867 million, as indicated on Attachment A.

B. Correcting the Application of Principle to Data.

18 The Order enunciates the principle that the costs associated with paragraph 12.b (Trail Mountain) and 12.c (environmental remediation) of the Settlement Agreement should be

removed from the revenue requirement. This principle is not preserved under the current treatment of these issues in the Order, given the unanticipated implications in the calculation of the adjustments—specifically, the associated tax impacts, the proper removal of the appropriate rate base items and associated amortization, the proper calculation of revenue requirement associated with the rate base deductions, and the inappropriate adjustments made to Environmental Settlement Costs on Company Adjustment 8.1 and joint owner costs on Company Adjustment 5.3.

19 An order conference would seem to be an appropriate vehicle for addressing these issues. At such a conference, the Commission may want to consider the following options:

20 (a) The Commission could provide for supplemental proceedings to allow taking of additional evidence regarding the proposed accounting treatment for Trail Mountain and environmental remediation. According to paragraph 63 of the Order, the recommendation proposed in the Settlement Agreement did not "provid[e] adequate support for such treatment." Additional proceedings would permit additional testimony to be taken that would provide the Commission with a basis for resolving this issue one way or another in this case. One outcome could be that the recommendation in the Settlement Agreement would be approved, resulting in the $15.501 million rate increase proposed in the Settlement Agreement. This could be accomplished by immediate implementation of the revenue requirement set forth in the Order ($15,057,000), followed by a surcharge upon conclusion of the supplemental proceedings to capture the revenue requirement increase flowing from the outcome of those proceedings.

21 (b) Alternatively, the Order could be corrected by including all of the necessary adjustments to remove the Trail Mountain and environmental remediation costs. Rather than increasing the revenue requirement to $15.867 million (as calculated in Attachment A), however, the revenue increase would be capped at the $15.501

million figure recommended in the Settlement Agreement. Under this solution, the Company would bear the impact of the revenue requirement shortfall.

22 Unless otherwise directed by the Commission, the Company will file appropriate tariff sheets on November 5 to implement the $15,057,000 increase, as currently required by the Order.

IV. CONCLUSION

23 For the foregoing reasons, the Company respectfully requests that the Commission schedule an order conference at the earliest convenient date to clarify the meaning and requirements of paragraphs 63, 64, 77, and 87 of the Order.

DATED: November 3, 2004.

James M. Van Nostrand
Stephen C. Hall
Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204

Of Attorneys for PacifiCorp

ATTACHMENT A

PacifiCorp
Washington Commission Order No. 06 Reconciliation

Revenue Requirement Adjustments

		WUTC Order No. 06 (Note 7)	**Company Reconciliation**	Ref
1	Settlement Position	15,501	15,501	Panel-4 p. 1
2				
3	Adjustments			
4	Trail Mountain			See Order 1 lead sheet (attached)
5	Expense	(641)	(675)	Panel-4 p. 7
6	Rate Base	31	(256)	Note 1
6	Tax		1,610	Note 3
7				
8				
9	Environmental Costs			See Order 2 lead sheet (attached)
10	Expense	30	(289)	"
11	Rate Base	156	(80)	Note 4
11	Tax		14	Note 5
12				
13				
14	Interest Synchronization/Other	(19)	44	Note 6
15	Total	15,057	15,867	

Note 1	Rate Base	(2,156)	Panel-4 p. 7
	Pre Tax ROR	11.88%	Note 2
		(256)	

		Capital Structure	Cost	WACC	Pre Tax (1.693 bump)
Note 2	WACC				
	Debt	51.5%	6.5%	3.35%	3.35%
	Preferred	1.4%	6.7%	0.09%	0.16%
	Common	47.1%	10.5%	4.94%	8.37%
		100.0%		8.39%	11.88%

Note 3	FIT impact of Trail Mtn	1,167	See Order 1 lead sheet
	Tax on Tax effect	37.95%	JTW-3 p. 2.1
		443	
	Total tax effect	1,610	

Note 4	Rate Base	(677)	See Order 2 Lead Sheet
	Pre Tax ROR	11.88%	Note 2
		(80)	

Note 5			
	FIT impact	10	See Order 2 lead sheet
	Tax on Tax effect	37.951%	JTW-3 p. 2.1
		4	
	Total tax effect	14	

Note 6 True up of tax expense as a result of a decrease in rate base and therefore a decrease in interest expense which results in more taxable income and higher tax expense. Includes tax on tax effect.

FIT impact	32
Tax on Tax effect	37.95%
	12
Total tax effect	44

Note 7 - This represents the Company's attempt to reconcile the Commissions Order based on Exhibit Panel-4 p. 7 and 9.

PacifiCorp
Washington Results of Operations March 2003
Trail Mountain Removal Adj

	ACCOUNT	Type	TOTAL COMPANY	FACTOR	FACTOR %	WASHINGTON ALLOCATED	REF#
Adjustment to Income:							
Amortization Expense of Closure Costs	501	1	(7,935,023)	SE	8.513%	(675,503)	See Adj.
Adjustment to Rate Base:							
Unamortized Deferred Debit	182M	1	(25,331,031)	SE	8.513%	(2,156,412)	See Adj.
Removal Schedule M's	SCHMDT	1	(17,215,267)	SE	8.513%	(1,465,523)	Order 1.1
	SCHMDT	1	(15,912,313)	SE	8.513%	(1,354,603)	Order 1.1
	SCHMAT	1	(17,290)	SE	8.513%	(1,472)	Order 1.1

Adjustment Detail:	Acct 182399 *(SAP 187058)*	Acct 182399 *(SAP 187059)*	**Total**
13 Month Average	12,703,957	16,932,333	**29,636,290**
PacifiCorp Share (Approx. 85.5%)	10,858,456	14,472,576	**25,331,032**
Joint Owner Share (Approx. 14.5%)	1,845,502	2,459,757	**4,305,259**
	Ref. Page 5.3.1	**Ref. Page 5.3.1**	

Description of Adjustment:

This adjustment removes the regulatory impacts of the Trail Mountain Adjustment.

PacifiCorp
Washington Results of Operations March 2003
Enviro Reg Asset Removal

	ACCOUNT	Type	TOTAL COMPANY	FACTOR	FACTOR %	WASHINGTON ALLOCATED	REF#
Adjustment to Expense							
Remove Amortization Env. I (March 2003)	925	1	(3,467,286)	SO	8.346%	(289,368)	Order 2.1
Adjustment to Rate Base							
Remove Env. Reg Assets	182M	1	(8,115,339)	SO	8.346%	(677,280)	Order 2.1
Remove Schedule M's	SCHMDT	1	2,958,199	SG	8.774%	259,562	Order 1.1

Description of Adjustment:

This adjustment removes the Environmental Reg Asset balances for March 2004 and the associated amortization as this deferral accounting will be considered in a separate case.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing document upon the parties of record in this proceeding by first-class mail, addressed to said parties/attorneys' addresses as shown below:

Melinda J. Davison
Davison Van Cleve, PC
1000 SW Broadway, Suite 2460
Portland, OR 97205

John O'Rourke
Citizens' Utility Alliance of Washington
212 W Second Avenue, Suite 100
Spokane, WA 99201

Ralph Cavanagh
Northwest Project Director
Natural Resources Defense Council
71 Stevenson Street, Suite 1825
San Francisco, CA 94105

Robert Cromwell
Public Counsel Section
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012

Shannon E. Smith
Washington Utilities & Transportation Commission
1400 S Evergreen Park Drive SW
Olympia, WA 98504

Chuck Eberdt
The Energy Project
1701 Ellis Street
Bellingham, WA 98225

DATED: November 3, 2004.

James M. Van Nostrand