

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET UE-090205
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 09
)	
v.)	
)	FINAL ORDER APPROVING AND
PACIFICORP D/B/A PACIFIC)	ADOPTING SETTLEMENT
POWER & LIGHT COMPANY,)	STIPULATION
)	
Respondent.)	
.....)	

1 ***Synopsis.** The Commission approves and adopts a Settlement Stipulation filed by the parties to this general rate case that, among other things, establishes the rates customers will pay on a prospective basis beginning January 1, 2010, for electric service provided by PacifiCorp to customers in Washington. The Commission finds reasonable the parties' agreed \$13.5 million (5.3 percent) increase in the Company's electric revenue requirement.*

SUMMARY

2 **PROCEEDING.** On February 9, 2009, PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff WN U-74. PacifiCorp proposed to increase rates and charges for electric service provided to customers in the state of Washington by \$38.5 million, or 15.1 percent.

3 At its regularly scheduled Open Meeting on February 26, 2009, the Commission suspended the tariff filing for 10 months concluding on January 11, 2010, and set the docket for hearing.

- 4 The Commission convened a prehearing conference at Olympia, Washington on March 23, 2009, before Administrative Law Judge Patricia Clark. The procedural schedule established at the prehearing conference required responsive testimony and exhibits from the Commission's regulatory staff (Commission Staff or Staff), the Public Counsel Section of the Office of the Attorney General (Public Counsel) and intervenors by August 28, 2009. On August 25, 2009, however, all of the parties in the proceeding filed a Settlement Stipulation (Settlement), which they propose the Commission adopt in resolution of all issues. The Commission, at the parties' request, suspended most of the procedural schedule and gave notice it would conduct a settlement hearing on October 29, 2009. Each party filed testimony in support of the Settlement on September 22, 2009. A public comment hearing was held in Yakima, Washington, on October 12, 2009, during which three consumers presented testimony. The settlement hearing convened, as scheduled, on October 29, 2009. Chairman Jeffrey D. Goltz, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones were present for the settlement hearing and were assisted at the bench by Administrative Law Judge Patricia Clark.
- 5 During the settlement hearing, the parties presented eight witnesses in support of the Settlement. PacifiCorp presented the testimony of Cathie A. Allen, Regulatory Manager, and Andrea L. Kelly, Vice President, Regulation. The Commission Staff presented the testimony of David Nightingale, Senior Regulatory Engineering Specialist, and Thomas E. Schooley, Regulatory Analyst.¹ The Public Counsel Section of the Washington Office of Attorney General (Public Counsel) presented the testimony of Mark T. Widmer, consultant, and Donna Ramas, consultant. Public Counsel and The Energy Project presented the testimony of Glen A. Watkins, consultant. The Industrial Customers of Northwest Utilities (ICNU) presented the testimony of Robert M. Meek, Associate General Counsel for Boise, Inc., a member of ICNU.

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See RCW 34.05.455.*

- 6 **PARTY REPRESENTATIVES.** Katherine McDowell, McDowell & Rackner P.C., Portland, Oregon, and Michelle Mishoe, in-house counsel, represent PacifiCorp. Sarah Shifley, Assistant Attorney General, Seattle, Washington, represents Public Counsel. Donald T. Trotter and Jennifer Cameron-Rulkowski, Assistant Attorneys General, Olympia, Washington, represent Commission Staff. Melinda J. Davison and Irion Sanger, Davison Van Cleve, Portland, Oregon, represent ICNU. Brad Purdy, Attorney at Law, Boise, Idaho, represents The Energy Project.
- 7 **COMMISSION DETERMINATIONS.** The Commission finds on the basis of the evidence presented that PacifiCorp requires rate relief, and determines that the Settlement results in rates that are fair, just, reasonable and sufficient. The Commission accordingly approves and adopts the Settlement in full resolution of the issues in this proceeding.

MEMORANDUM

I. Background and Procedural History

- 8 On February 9, 2009, PacifiCorp filed revisions to its current tariffs designed to increase revenue by \$38.5 million (15.1 percent). The filing was based on a twelve month test year ending June 30, 2008, with adjustments for known and measurable changes through June 30, 2009. The Company's as-filed request included:
- An overall rate of return of 8.51 percent.
 - A rate of return on common equity of 11.0 percent.
 - A capital structure including 50.1 percent equity.
 - A rate base of \$737.8 million.
 - Total requested annual revenue of \$293.5 million.
 - An overall rate increase of 15.1 percent with a 15.2 percent residential rate increase.
 - Increase of \$125 million in net plant associated with the acquisition of the Chehalis Power Plant (Plant) and the Marengo II wind-power resource.

- Increase of \$2.8 million in Operations and Maintenance (O & M) expenses.
- Increase of \$2.9 million in depreciation and amortization expenses.
- Washington-allocated net power costs of \$10.0 million.
- A request for Commission determination that the Chehalis Generating Plant complies with Washington's greenhouse gases emission performance standard.

9 The Company's direct testimony accompanied its filing, as required by law. On August 25, 2009, all parties filed a Settlement, which requested that the Commission approve and adopt their Settlement in full resolution of the issues in this proceeding. On September 22, 2009, each party filed testimony in support of the Settlement.

II. Settlement

10 We summarize in this section the parties' Settlement, which is attached to, and made a part of, this Order by this reference. If any inconsistency between our summary here and the Settlement is perceived, the express terms of the Settlement control.

A. Revenue Requirement

11 The parties propose an increase in revenues from Washington customers of \$13.5 million (5.3 percent) effective January 1, 2010.² The rate increase proposed to recover this revenue "is primarily driven by two key areas: investment in the system and an increase in net power costs" coupled with the need to begin recovering the deferred costs associated with the Chehalis Generating Plant.³ The Company states that the Settlement balances the interests of the Company with those of customers because it will "forego additional revenues for calendar year 2010 associated with other cost elements in order to begin recovering the \$18 million in deferred costs

² Settlement, Exh. No. 3, at ¶ 11.

³ Allen/Kelly, Exh. No. CAA/ALK-1T at 5.

associated with Chehalis.”⁴ The Company agrees to not file a new rate case before January 11, 2010, as a benefit to customers.

- 12 Staff states that the Company’s evidence supports a finding that the acquisitions of the Chehalis Generating Plant and the Marengo II wind resource were prudent and that these facilities are used and useful in providing electric service to Washington customers.⁵ Staff also concludes that the Company is entitled to defer the Chehalis Generating Plant-related costs.⁶ Staff states that its conclusion is based on the review of nearly 600 data responses from the Company as well as an on-site visit to the Company’s office in Portland, Oregon, to review documents and question Company personnel.⁷ Staff believes that the “resolution of this case on the terms described in the Settlement Stipulation is consistent with the public interest” because the Chehalis Generating Plant costs are deferred over six years rather than the 13 years originally proposed by the Company.⁸ Staff also concludes that the Company’s investments in new wind and gas generating plants are prudent, used and useful, and comply with the Greenhouse Gases emissions performance Standard. In light of these findings, Staff views the Settlement result to be “reasonable and sufficient.”⁹
- 13 Public Counsel asserts that it also performed an in-depth review of the Company’s net power costs including “review of approximately 270 discovery responses; and, review of the . . . production dispatch model inputs.”¹⁰ Public Counsel prepared 40 net power cost studies to support some 18 potential power and other adjustments which, when considered with the other parties’ potential adjustments, led to a settlement agreement

⁴ *Id.* at 6.

⁵ Nightingale, Exh. No. DN-1TC at 3.

⁶ *Id.* at 21.

⁷ Schooley, Exh. No. TES-1T at 4.

⁸ *Id.* at 5.

⁹ *Id.* at 6.

¹⁰ Widmer, Exh. No. MTW-1T at 2 and Ramas, Exh. No. DR-1T at 3.

that lowered the requested rate increase.¹¹ Public Counsel concludes that, on the basis of its review, “the Stipulation and revenue requirement incorporated therein, is fair and reasonable and in the interest of Washington ratepayers.”¹² Public Counsel also concludes that the Company’s acquisition of the Chehalis Generating Plant is prudent and the plant is used and useful for serving Washington customers.¹³

14 ICNU states that it conducted an extensive analysis of and discovery on the Company’s filing which “demonstrated that the overall increase of \$13.5 million on an equal percentage basis is a fair and reasonable resolution of the issues in this proceeding.”¹⁴

B. Chehalis Generating Plant’s Compliance With Greenhouse Gases Emissions Performance Standard and Cost Amortization Proposal

15 The Settlement proposes that the Commission find that the Chehalis Generating Plant complies with the Greenhouse Gases Emissions Performance Standard and authorize the Company to recover \$18 million in deferred costs over a six year period of amortization.¹⁵

16 The Company states that the Chehalis Generating Plant is a new base load resource that complies with Washington’s Greenhouse Gases Emissions Performance Standard and therefore it is entitled to defer certain costs as allowed by RCW 80.80.060(6).¹⁶ According to the Company, the Settlement term that allows it to recover \$18 million

¹¹ Widmer, Exh. No. MTW-1T at 2.

¹² Ramas, Exh. No. DR-1T at 4.

¹³ Widmer, Exh. No. MTW-1T at 3.

¹⁴ Meek, Exh. No. RMM-1T at 2.

¹⁵ Settlement, Exh. No. 3 at ¶¶ 12 – 13.

¹⁶ Allen/Kelly, Exh. No. CAA/ALK-1T at 6 and 14.

in deferred costs over six years is an appropriate trade-off against additional revenues for calendar year 2010 associated with its other cost elements.¹⁷

- 17 Staff concludes that the Chehalis Generating Plant complies with the statutory standard for Greenhouse Gases Emissions Performance.¹⁸ Staff asserts that the Company is entitled to defer certain costs associated with the Plant and that the \$18 million deferral of costs is reasonable.¹⁹ Staff also concludes that the agreement to allow the Company to recover and amortize \$18 million over six years is reasonable when compared to the Company's original request to amortize this amount over 13 years.²⁰
- 18 Public Counsel reviewed the three components of costs the Company deferred in association with the Chehalis Generating Plant and concludes that the \$18 million cost deferral is reasonable and in the public interest.²¹ Public Counsel concludes that the six-year amortization period is reasonable because it "strikes a better balance between not burdening customers with a large rate increase in the near future while allowing PacifiCorp to recover its prudent costs."²²

C. Rate Spread and Residential Basic Charge

- 19 The Settlement proposes to spread the rate increase on an equal percentage (5.3 percent) to all rate schedules in accordance with Appendix A to the Settlement.²³ The revised tariff sheets necessary to effect this rate change effective January 1, 2010, are

¹⁷ *Id.* at 6.

¹⁸ Nightingale, Exh. No. DN-1TC at 11.

¹⁹ Schooley, Exh. No. TES-1T at 7.

²⁰ Schooley, Exh. No. TES-1T at 6.

²¹ Meek, Exh. No. RMM-1T at 2.

²² Widmer, Exh. No. MTW-1T at 4.

²³ Settlement, Exh. No. 3 at ¶ 4.

attached as Appendix B to the Settlement. The rate spread can be summarized as follows:

- The residential basic charge will remain at \$6.00.²⁴
- The balance of the revenue requirement is spread equally among all customer classes.²⁵

20 The Company supports the proposal to spread the rate increase on an equal percentage of revenue basis after consideration of the cost to serve each class as well as other factors including “gradualism, rate stability, customer impacts, and perceptions of equity.”²⁶

21 Staff believes the rate spread and rate design agreements are reasonable because “the uniform percentage spread maintains the existing share each customer class contributes to the overall revenue requirement.”²⁷ Staff affirms that it has reviewed the rate spread calculations and proposed tariff sheets included in Appendices A and B to the Settlement and found them to conform to the Settlement.²⁸ Staff states that the residential basic charge will remain at the \$6.00 per month level approved in the Company’s last general rate case.²⁹

22 Public Counsel supports the rate spread and rate design agreements and states that spreading the rate increase on an equal percentage basis to all customer classes represents a fair and reasonable assignment of the revenue responsibility of the

²⁴ *Id.*, Appendix B at 4.

²⁵ *Id.*, Appendix A at 1.

²⁶ Allen/Kelly, Exh. No. CAA/ALK-1T at 7.

²⁷ Schooley, Exh. No. TES-1T at 9.

²⁸ *Id.*

²⁹ *Id.* *Washington Utilities and Transportation Commission v. PacifiCorp d/b/a Pacific Power and Light Company*, Docket UE-080220, Order 05 (October 8, 2008).

classes.³⁰ Public Counsel supports retaining the residential basic charge at \$6.00 per month.³¹

D. Authorized Return on Rate Base

- 23 The Settlement maintains the Company's current authorized rate of return at 8.06 percent, as approved in the Company's last litigated general rate case.³² For reporting or accounting purposes, the return on equity remains equal to the level approved in the last litigated general rate case or 10.2 percent.³³
- 24 While the parties support an 8.06 overall rate of return, they have "explicitly not agreed on the appropriate capital ratios or the cost of any capital structure component."³⁴ The Company asserts that this is a reasonable resolution of what otherwise would have been a contentious matter and states that it was willing to agree to no change in its rate of return in order to achieve an overall settlement.³⁵ Staff states that the overall rate of return is acceptable and concludes that the use of the last authorized return on equity in the calculation of Allowance for Funds Used During Construction (AFUDC) does not materially affect Washington allocated costs.³⁶

³⁰ Watkins, Exh. No. GAW-1T at 3.

³¹ *Id.*

³² *Washington Utilities and Transportation Commission v. PacifiCorp d/b/a Pacific Power and Light Company*, Docket UE-061546, Order 08 ¶ 222 (January 21, 2007).

³³ *Id.*

³⁴ Settlement, Exh. No. 3 at ¶ 16.

³⁵ Allen/Kelly, Exh. No. CAA/ALK-1T at 9.

³⁶ Schooley, Exh. No. TES-1T at 10.

E. Low Income Bill Assistance

- 25 The Settlement proposes that the Low Income Bill Assistance (“LIBA”) Program credit implemented through Schedule 17 be increased by a percentage amount equal to the overall percentage change in residential rates.³⁷ All of the increase will be used to increase the Schedule 17 energy credit.³⁸ LIBA is funded by other customers through a Schedule 91 surcharge.³⁹ The amount of the surcharge for each customer class is set forth in Appendix B to the Settlement.⁴⁰
- 26 The Company asserts that it accepts the preference of The Energy Project to apply the entire increase in the Schedule 91 surcharge to increase the level of the Schedule 17 credit, rather than expanding the cap for the number of participants in the program.⁴¹
- 27 Staff supports the 5.3 percent increase in the Schedule 91 surcharge that will raise an additional \$60,550 per month for a total of \$1,202,000 available for the LIBA energy credit.⁴² The bill credit will be distributed to a total of 4,475 eligible customers, the same number covered under the current tariff, thereby maintaining administrative costs at the current level.⁴³ Staff supports these changes as reasonable.
- 28 The Energy Project supports the agreement to increase the magnitude of the billing credit rather than apply some of the increased revenue from the surcharge to expand

³⁷ Settlement, Exh. No. 3 at ¶ 17.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*, Appendix B at 22.

⁴¹ Allen/Kelly, Exh. No. CAA/ALK-1T at 9.

⁴² Schooley, Exh. No. TES-1T at 11.

⁴³ *Id.*

the number of eligible customers.⁴⁴ The Energy Project also indicates its desire to meet with the Company and discuss ways to achieve greater penetration from the program or make other improvements prior to the next rate case.⁴⁵

F. Pension Plan Modification

- 29 The Settlement proposes that the Commission authorize \$2,901,000 to be recorded as a “reduction to the existing pension regulatory asset” and amortized over three years.⁴⁶ The 2010 amount of this amortization is included in the agreed-upon annual revenue increase proposed in the Settlement. If the Commission approves this resolution, the Company will seek to withdraw its pending accounting petition addressing the same topic.⁴⁷
- 30 The Company’s accounting petition, filed November 4, 2008, requests authorization to reduce the existing pension and post-retirement welfare regulatory asset by \$41 million system-wide and \$2.9 million for Washington and a “measurement date change transitional adjustment” of \$14 million system-wide and \$1 million for Washington.⁴⁸ The Company states that the Settlement resolves both issues in the accounting petition and avoids the need to address these issues in a future rate case.
- 31 Staff explains that the Company’s accounting petition proposes amortizing a total company net pre-tax benefit to customers of \$26.76 million over a 10-year period.⁴⁹ The pension curtailment gain arises from modification to pension plans offered by the

⁴⁴ Eberdt, Exh. No. CME-1T at 3.

⁴⁵ *Id.*

⁴⁶ Settlement, Exh. No. 3 at ¶ 18. The Company has an accounting petition pending before the Commission that addresses the treatment of gain arising from the Company’s modification to its pension program. *In the Matter of the Petition of PacifiCorp d/b/a Pacific Power and Light Company for an Accounting Order Regarding Pension Curtailment*, Docket UE-081997.

⁴⁷ *See n.* 46.

⁴⁸ Allen/Kelly, Exh. No. CAA/ALK-1T at 10.

⁴⁹ Schooley, Exh. No. TES-1T at 12.

Company and accepted by a large percentage of employees in August 2008. The Company's accounting petition also seeks to reflect the effect of changing the "measurement date" for measuring plan assets and benefit obligation from September 30 to December 31 to comply with Statement of Financial Accounting Standard 158.⁵⁰ According to Staff, the effect of the date change is to create a total company debit of \$13.773 million for an additional three months of pension assets. The \$26.746 million is net of this additional debit. Staff asserts that the Settlement proposes to allocate to Washington its share of the pension curtailment gain without adjustment for the measurement date and accelerate the amortization of the gain from 10 years to three years. Staff concludes that this resolution is reasonable because it captures for customers a more prompt reduction in cost than the Company's original request.⁵¹

- 32 Public Counsel represents that the Settlement treatment of the pension curtailment gain is a "good result for ratepayers as the gain resulting from pension curtailment will be flowed through to ratepayers over a reasonable period of time."⁵²

G. Temperature Normalization Methodology

- 33 The Settlement proposes to use the temperature normalization methodology included in the Company's initial filing, but reserves the parties' right to propose changes to that methodology or to propose a new methodology in future rate cases if new information comes to light.⁵³ The parties also agree to "convene discussions prior to the Company's filing its next general rate case in an effort to reach resolution of outstanding concerns . . ."⁵⁴

⁵⁰ In 2008, the Financial Accounting Standards Board issued the Statement of Financial Accounting Standards 158 which requires that each corporation measure plan assets and benefit obligations as of the end of its fiscal year. PacifiCorp's fiscal year ends December 31. Schooley, Exh. No. TES-1T at 13.

⁵¹ Schooley, Exh. No. TES-1T at 14.

⁵² Ramas, Exh. No. DR-1T at 5.

⁵³ Settlement, Exh. No. 3 at ¶ 19.

⁵⁴ *Id.*

- 34 The Company asserts that this resolution is reasonable and valuable to the Company because “it provides greater certainty in the methodology to be used for future rate cases in Washington.”⁵⁵
- 35 Staff explains that the temperature normalization method is important because it captures the effect of average temperatures on both energy and peak loads.⁵⁶ According to Staff, the Company proposes to change its temperature methodology to use “more robust” daily temperature records over a 20-year period, rather than the previously used 30-year period, and to modify its evaluation of peak load to include three days of data rather than one.⁵⁷ Staff notes that one effect of the new methodology is to allocate more peak costs within the Western Control Area (WCA) to Washington because Washington’s weather is more variable than other parts of the WCA such as Oregon and California.⁵⁸
- 36 Staff agrees with the Company’s modified methodology and supports the agreement to use the new method while allowing any party to propose changes to that method if new information comes to light. According to Staff, inconsistent application of the new method across Company jurisdictions would constitute such new information.⁵⁹

⁵⁵ Allen/Kelly, Exh. No. CAA/ALK-1T at 10.

⁵⁶ Schooley, Exh. No. TES-1T at 14 - 15.

⁵⁷ *Id.* at 16 - 17.

⁵⁸ *Id.* at 18.

⁵⁹ *Id.* at 18 - 19.

H. Renewable Energy Credit Reporting

37 According to the Settlement , the Company will provide a report by January 1, 2010, that includes:

(1) an explanation of how Renewable Energy Credits (“RECs”) and associated costs and/or revenues are allocated among PacifiCorp’s six states; (2) an explanation of how the Company determines proper disposition of RECs on a total-company and state-by-state basis; and, (3) a detailed accounting of the total-company RECs that were sold and the total company RECs that were retained for each year from calendar year 2005 through June 2009.⁶⁰

38 The Company agrees to report quarterly beginning March 31, 2010, to Staff, Public Counsel, and ICNU on its management of RECs from June 2009 forward, subject to the Protective Order in this docket.⁶¹ Finally, the parties agree that the Settlement does not change the rights of any party to file for deferred accounting except that the \$657,755 in REC revenue is included in the resolution of this case.⁶²

39 The Company will provide the agreed-upon reports through December 2012, at which point the Renewable Portfolio Standard will be in effect and may change the parties’ information needs.⁶³ According to the Company, the REC reports will “provide transparency, help the Parties understand the Company’s management of RECs, and are reasonable in light of the upcoming reporting requirements established by the Washington Renewable Portfolio Standard in WAC 480-109-040.”⁶⁴ The Company

⁶⁰ Settlement, Exh. No. 3 at ¶ 20.

⁶¹ *Id.* at ¶ 21. *Order 03, Protective Order*, entered March 2, 2009.

⁶² Settlement, Exh. No. 3 . at ¶ 22.

⁶³ *Id.* and WAC 480-109-040.

⁶⁴ Allen/Kelly, Exh. No. CAA/ALK-1T at 11.

also agrees to hold periodic meetings as requested by any party to provide additional details on the reports.⁶⁵

- 40 Staff explains that the Company included \$657,755 of REC revenue in this case. According to Staff, the reports the Company has agreed to provide will help the Staff and Commission to monitor REC activity to ensure that the Company treats this matter fairly across all of its jurisdictions.⁶⁶
- 41 Public Counsel explains that a market for RECs is developing in which the green traits of qualifying power production facilities can be sold separately from the power itself.⁶⁷ According to Public Counsel, the reports the Company has agreed to produce will “be very helpful to the parties in monitoring RECs, including both the banking and sale of RECs, and for use in evaluating the appropriate treatment of RECs in future rate cases in Washington.”⁶⁸
- 42 ICNU states that the Settlement provisions addressing REC reporting “provide the Parties the practical ability to file for deferred accounting or request that the Commission take another action regarding PacifiCorp’s Washington-allocated RECs.”⁶⁹

I. Net Power Cost Support

- 43 The Settlement states that, in the Company’s general rate case or any other future power cost related case, the Company will provide net power cost workpapers and supporting documents according to the terms outlined in Appendix D of the Settlement.⁷⁰ The Company agrees to coordinate with ICNU and make any necessary

⁶⁵ *Id.*

⁶⁶ Schooley, Exh. No. TES-1T at 19.

⁶⁷ Ramas, Exh. No. DR-1T at 5.

⁶⁸ *Id.* at 6.

⁶⁹ Meek, Exh. No. RMM-1T at 3.

⁷⁰ Settlement, Exh. No. 3 at ¶ 24 and Appendix D.

request to the Commission for a protective order in advance of the filing so that the Company may provide certain confidential information concurrent with the Company's filing.⁷¹

- 44 ICNU contends that the requirement for the Company and ICNU to exchange the GRID model, its inputs, workpapers, and other supporting documents will "facilitate a more effective and equitable review process" and "hopefully reduce the number of future disputes regarding discovery and access to information."⁷²

J. Next General Rate Case

- 45 The Settlement provides that the Company will not file a new general rate case until after January 11, 2010.⁷³ The Company notes that this provision of the Settlement means that customers would not experience another rate increase before late 2010.⁷⁴ ICNU supports this provision as in the interest of ICNU's members.⁷⁵

K. Requested Findings as to the Marengo II and Chehalis Facilities

- 46 The Settlement calls for the Commission to find that the Company's Chehalis Generating Plant and Marengo II wind resource acquisitions are prudent and used and useful in providing service to customers in Washington.⁷⁶
- 47 The Company asserts that the Marengo II wind project is both prudent and used and useful in providing service in Washington because: (1) the project is currently providing service to Washington customers; (2) the Company owns all of the assets,

⁷¹ *Id.* at ¶ 24.

⁷² Meek, Exh. No. RMM-1T at 3.

⁷³ Settlement, Exh. No. 3 at ¶ 25.

⁷⁴ Allen/Kelly, Exh. No. CAA/ALK-1T at 7.

⁷⁵ Meek, Exh. No. RMM-1T at 2.

⁷⁶ Settlement, Exh. No. 3 at ¶ 26 – 27.

output, and interconnection rights; (3) the project will lower net power costs over its design life; (4) the project reduces commodity fuel-cost risk; and (5) the project diversifies generator failure risk.⁷⁷

48 The Company also asserts that the Chehalis Generating Plant is both prudent and used and useful for service in Washington because: (1) the Plant is currently providing service to Washington customers; (2) the Company owns the Plant and can take full advantage of the its dispatch flexibility to replace expiring power contracts and integrate non-dispatchable wind resources; and (3) the Plant satisfies a portion of the resource deficit identified in the 2007 Integrated Resource Plan (IRP).⁷⁸ Moreover, it states the Plant complies with the Greenhouse Gases Emissions Performance Standard in RCW 80.80.040(1).⁷⁹

49 Staff evaluates the Marengo II and Chehalis Generating Plant acquisitions using principles applied in past Commission orders including: (1) whether the generating resource is needed; (2) whether the Company evaluated alternatives; (3) whether the acquisition decision involved the Board of Directors; and (4) whether the Company's analysis is adequately documented.⁸⁰ According to Staff, the Company's evidence supports a finding of prudence considering these principles. Staff also notes that, in order to be prudent, new power resources must comply with all state laws, including the RCW 80.80 Greenhouse Gases Emissions Performance Standard. Staff finds that the Marengo II plant is exempt from compliance under RCW 80.80 and that the Chehalis Generating Plant complies with the standard.⁸¹

50 Public Counsel asserts that the Chehalis Generating Plant is used and useful because it is providing service to Washington customers and the Plant is a prudent acquisition

⁷⁷ Allen/Kelly, Exh. No. CAA/ALK-1T at 13.

⁷⁸ *Id.* at 14 -15.

⁷⁹ *Id.*

⁸⁰ Nightingale, Exh. No. DN-ITC at 8 – 9.

⁸¹ *Id.* at 8.

because it provides power at lower cost than an alternative resource.⁸² Public Counsel also represents that the power resource is needed to fill a resource deficit in 2012 identified in the 2008 IRP.⁸³ According to Public Counsel, the economics of the transaction justify its acquisition prior to the need identified in the IRP.⁸⁴

III. Discussion and Decision

A. Criteria for Approval of Settlements

51 WAC 480-07-750(1) states in part: “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.”

52 Thus, the Commission considers the individual components of the Settlement Stipulation under a three-part inquiry. We ask:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

53 The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to condition(s).
- Reject the proposed settlement.

⁸² Widmer, Exh. No. MTW-1T at 2.

⁸³ *Id.* at 3.

⁸⁴ *Id.*

- 54 In general, and as discussed below, we find the Settlement terms proposed by the parties to be consistent with law and policy, and to resolve reasonably the issues in this proceeding. The parties made compromises relative to their respective litigation positions to arrive at end results that are fair, just and within an acceptable range of possible outcomes supported by the evidence in the record.
- 55 While we acknowledge the opposition to any rate increase expressed by members of the public through oral and written comments, our decisions must be made in accordance with law, policy and the factual record before us. The Commission's mission is essentially one of determining an appropriate balance between the needs of the public to have safe and reliable electric service at reasonable rates and the financial ability of the utility to provide such services. Thus, the results of our orders in proceedings such as this must be to establish rates that are, in the words of our governing statutes, "fair, just, reasonable and sufficient."⁸⁵ This means rates that are "fair" to customers and to the Company's shareholders; "just" in the sense of being based solely on the record developed following principles of due process of law; "reasonable" in light of the range of possible outcomes supported by the evidence and; "sufficient" to meet the needs of the Company to cover its expenses and attract necessary capital on reasonable terms.
- 56 In the Settlement, the parties have agreed to a final outcome, but not the details underlying that outcome. We commonly refer to this type of settlement as a "black box" settlement. While we allow parties to file "black box" settlements, we must have sufficient testimony in support of this type of settlement to allow us to reach the necessary findings for approval of its terms and conditions. In this case, unlike many others we have considered, each party filed individual testimony in support of the Settlement rather than joint testimony supporting its approval. We found the comprehensive individual testimony submitted here to be of greater value in our deliberative process. We commend the parties for providing the Commission a more detailed and comprehensive analysis supporting the parties' conclusion that the agreement is in the "public interest."

⁸⁵ RCW 80.28.010(1) and 80.28.020.

B. Terms of Settlement Relating to Revenue Requirement, Rate Spread, and Related Issues

- 57 We turn now to the Settlement terms that cover revenue requirement,⁸⁶ rate spread, and related issues that directly impact the rates agreed upon by the parties. First, we find that the overall revenue requirement to be reasonable in light of the original request made by the Company and the evidence demonstrating the analysis performed by the other parties to this case. The Settlement terms reflect this analysis, which, after review, we believe leads to a balanced and just result. For these same reasons, we accept the parties' agreement to maintain PacifiCorp's current authorized rate of return at 8.06 percent, as approved in the Company's last litigated general rate case.⁸⁷ We specifically note that while acknowledging that the Settlement does not establish an agreed return on equity, the Company affirms that the previously approved 10.2 percent return on equity will satisfy the requirements of the Bonneville Power Administration for determining average system cost and of the Federal Energy Regulatory Commission for calculating AFUDC.⁸⁸
- 58 As to rate spread, we accept the parties' agreement to spread the rate increase on an equal percentage to all rate schedules and to maintain the current residential basic charge at \$6.00.⁸⁹ This result preserves the status quo by maintaining the existing

⁸⁶ The Settlement includes \$2,901,000, which is to be recorded as a reduction in the existing pension regulatory asset and amortized over three years. Settlement, Exh. No. 3 at ¶ 18. We find the parties' agreement produces a reasonable result because it accelerates amortization of the gain from ten years to three years. Allen/Kelly, Exh. No. CAA/ALK-1T at 11 and Schooley, Exh. No. TES-1T at 12 – 14. This reduction in amortization period allows customers to realize a more prompt reduction in costs.

⁸⁷ Settlement, Exh. No. 3 at ¶ 16 and Order 08 in Docket UE-061546. For a full case citation, *see* n. 32.

⁸⁸ Kelly, TR. at 129 – 130.

⁸⁹ Settlement, Exh. No. 3 at ¶ 4.

share each customer class contributes to the revenue requirement. Considering the circumstances of this Settlement, we believe this to be an appropriate result.⁹⁰

59 Finally, the parties agree to augment the Company's LIBA Program by increasing the Schedule 17 credit by a percentage amount equal to the overall percentage change in residential rates called for by the Settlement.⁹¹ By increasing the credit by an amount commensurate with the percentage increase in residential rates (5.3 percent), the parties have ensured that the bill assistance provided to low income ratepayers will not be degraded by the rate increase we approve here. Although overall participation in the program will not be increased, we believe this result to be a positive development and a step in the right direction. We commend the Company and the parties for acting to improve the availability of electric service to the most vulnerable of the Company's ratepayers during these tough economic times. We turn now to other issues resolved by the Settlement.

C. Temperature Normalization Methodology

60 All parties agree to the temperature normalization methodology advocated by the Company in this filing. This determines average temperature by using daily temperatures over a 20-year period, rather than a 30-year period, and calculates peak load by using data from the three peak days (rather than one) during each month over an 18-year period.⁹² While the Company's methodology may allocate more system costs on Washington customers, the parties agree to its use here, but reserve the right to contest its use in future proceedings. We accept the parties' resolution of this issue recognizing that it represents a change in the method by which we determine overall and peak demand. While this gives us pause, we also recognize that the Company's methodology faces further scrutiny by the parties, which we encourage and support.

⁹⁰ Schooley, Exh. No. TES-1T at 9.

⁹¹ Settlement, Exh. No. 3 at ¶ 17.

⁹² Settlement, Exh. No. 3 at ¶ 19 and Schooley, Exh. No. TES-1T at 16 – 17.

D. Reports on Renewable Energy Credits and Power Cost Workpapers

61 The parties also agree that PacifiCorp will provide reports to Staff, ICNU and Public Counsel on the management of its RECs. The first report will cover calendar years 2005 – 2009 and is due before January 1, 2010. The Company will file quarterly reports beginning March 31, 2010, which will cover its activities during the previous quarter.⁹³ The parties agree that the reporting will continue at least through December 31, 2012. We find the parties’ agreement reasonable because it promotes transparency in the Company’s management of these credits and will help ensure that the Company treats this matter fairly across all of its jurisdictions.⁹⁴

62 The agreement also provides for the exchange of certain power cost workpapers and supporting documents between PacifiCorp and ICNU in the next general rate case or power cost related case.⁹⁵ While we regret that parties must resort to formalizing their relationship during discovery, we commend the Company and ICNU for reaching an understanding on this issue and believe that their cooperation will inform and enhance the record in future proceedings.

E. Limitation on Filing of New General Rate Case

63 The Settlement provides that PacifiCorp will not file a new general rate case until January 11, 2010.⁹⁶ While not a significant delay or “stay-out,” we accept this provision of the agreement, but note that it offers little more than what would have occurred had this case gone to hearing. That said, the provision gives ratepayers a short period in which the Company will refrain from filing a new rate case. We turn now to the Settlement provisions dealing with PacifiCorp’s new generating facilities.

⁹³ Settlement, Exh. No. 3 at ¶ 20.

⁹⁴ We note that although Washington’s Renewable Portfolio Standard is not yet in effect, the Company accounted for RECs sold and included \$657,755 of REC revenue in this case. Settlement, Exh. No. 3 at ¶ 22 and Schooley, Exh. No. TES-1T at 19.

⁹⁵ *Id.* at ¶ 24 and Appendix D.

⁹⁶ *Id.* at ¶ 25.

F. Findings on Marengo II and Chehalis Generating Plant

64 The parties request that the Commission find that the Marengo II and Chehalis Generating Plant acquisitions are prudent and used and useful in providing service to customers in Washington.⁹⁷ When examining the acquisition of new facilities, we consider whether: (1) the new resources are necessary; (2) the Company evaluated and considered alternatives; (3) the acquisition decision involved the Board of Directors; and (4) whether the Company's analysis and decision-making process is adequately documented.⁹⁸ In addition, new power resources must comply with all state laws including the RCW 80.80 Greenhouse Gases Emissions Performance Standard. Having applied the evidence presented by the parties to the factors enumerated above, we examine first the Marengo II facility.

65 Marengo II is a newly constructed wind facility located near Dayton, Washington. It consists of 39 wind-turbine generators with a total capacity of 70.2 MW.⁹⁹ The project is operating and serving Washington ratepayers. We find that the project is cost-effective, and reduces commodity fuel-cost risk and diversifies the risk of generator failure. Finally, this resource enables the Company to make substantial progress in its effort to comply with its obligation to serve load with renewable energy or equivalent credits.¹⁰⁰ While the decision to acquire the facility was not made by the Board of Directors, we rely on staff's recitation that a reasonable Board

⁹⁷ *Id.* at ¶¶ 26 – 27.

⁹⁸ *Washington Utilities and Transportation Commission v. Puget Sound Power & Light Company*, Docket UE-921262, *et. al.*, Nineteenth Supplemental Order at 11 (September 27, 1994); *Washington Utilities and Transportation Commission v. Puget Sound Energy, Inc.*, Docket UE-031725, Order 12 at 9 (April 7, 2004); *Washington Utilities and Transportation Commission v. Puget Sound Energy*, Docket UE-060266 and UG-060267, Order 08 at 56 (January 5, 2007). Nightingale, Exh. No. DN-1TC at 8 – 9.

⁹⁹ Allen/Kelly, Exh. No. CAA/ALK-1T at 13 and Nightingale, Exh. No. DN-1TC at 4 and 10.

¹⁰⁰ RCW 19.285.040. As to other applicable laws, renewable resources, such as Marengo II, are deemed to comply with RCW 80.80.040(3). Nightingale, Exh. No. DN-1TC at 10.

would have approved this acquisition.¹⁰¹ For these reasons, we find that the Marengo II facility is used and useful and that its acquisition was prudent.

66 The Chehalis Generating Plant is a 520 MW natural gas-fired generator located near Chehalis, Washington.¹⁰² The Settlement relies on the testimony of Mr. David Nightingale and Mr. Mark Widmer. They both determined, after review of the project, its operational characteristics, its overall cost, the Company's Integrated Resource Plan (IRP) and relevant Request for Proposals (RFP) that the project was prudently acquired and is used and useful. Having reviewed the evidence supporting the parties' agreement, we agree that this resource is needed to fill a portion of the energy and capacity deficit identified in PacifiCorp's most recent IRP.¹⁰³ Moreover, this plant is currently providing service to Washington customers. The plant has the dispatch flexibility to replace expiring power contracts and integrate non-dispatchable wind resources and is located in the WCA. As to its cost, the parties point out that it was acquired "at terms more favorable than what the 2012 RFP responses had provided."¹⁰⁴ Moreover, they state that "the project acquisition cost was lower compared to the acquisition cost of a similar new resource" and the Plant "could have been a lost opportunity" if not acquired in a timely way outside of the 2012 RFP process.¹⁰⁵ Such analysis provides us with a reasonable basis to decide the prudence of an acquisition. Again, while the facility's acquisition was not made by the Board of Directors, we rely on staff's recitation that a reasonable Board would do so. For the above reasons, we find that the Chehalis Generating Plant is used and useful.

67 Although we find the Chehalis Generating Plant to be used and useful, in order to find that the acquisition is prudent and that the Plant should be placed into rates we must also find that the facility complies with RCW 80.80 and the Greenhouse Gases Emissions Performance Standard contained therein. The parties presented evidence

¹⁰¹ Nightingale, Exh. No. DN-1TC at 9.

¹⁰² Nightingale, Exh. No. DN-1TC at 3.

¹⁰³ Allen/Kelly, Exh. No. CAA/ALK-1T at 13.

¹⁰⁴ Allen/Kelly, Exh. No. CAA-1T at 14, Nightingale, Exh. No. DN-1TC at 12, Widmer, Exh. No. MTW -1T at 3, Tallman, Exh. No. MRT-1T at 2 – 5, Bird, Exh. No. SAB-1T at 6 -9.

¹⁰⁵ Widmer, Exh. No. MTW-1T at 3.

to support such a finding,¹⁰⁶ and we agree that the facility complies with the applicable law. Therefore, we also find that the acquisition of the Plant was prudent.

68 This is the Commission’s first review of a power resource under RCW 80.80, and, as in many circumstances of first impression, we are cautious in establishing a standard by which we will decide similar matters in the future. In this case, our deliberative process was facilitated by Staff witness, David Nightingale, whose testimony presented issues in a reasonable and effective manner.¹⁰⁷ In this connection, and in these circumstances, we note with favor Staff’s method to assign the most weight to plant design characteristics when it determined the Chehalis Generating Plant qualifies under the statute as “base load.” Given the weight and quality of the testimony presented by the parties, we find that the Chehalis Generating Plant complies with Greenhouse Gases Emissions Performance Standard found in RCW 80.80.

69 A new base load resource that complies with the Greenhouse Gases Emission Performance Standard entitles a utility to defer certain costs under RCW 80.80.060(6). We find reasonable the parties’ agreement that PacifiCorp be allowed to recover \$18 million in deferred costs over six years.¹⁰⁸ Specifically, we conclude the six-year deferral period is reasonable in light of the Company’s initial proposal to amortize this amount over 13 years because it does not burden ratepayers with a large increase in the near future while allowing PacifiCorp to recover its prudent costs.¹⁰⁹

G. Conclusion

70 In summary, all parties to this proceeding support the Settlement because it produces reasonable rates for the various customer classes while providing the Company a sufficient increase to ensure that it will continue to be able to provide reliable service. We conclude that the Settlement is lawful and consistent with public policy. The

¹⁰⁶ Bird, Exh. No. SAB-1T at 3 – 4 and Nightingale, Exh. No. DN-2.

¹⁰⁷ Nightingale, DN-1TC at 15 – 21.

¹⁰⁸ Settlement, Exh. No. 3 at ¶¶ 12 – 13.

¹⁰⁹ Schooley, Exh. No. TES-1T at 6 and Widmer, Exh. No. MTW-1T at 4.

evidence supports the Settlement terms as being reasonable resolutions of the issues. Considering all of the information available in the record, we find and conclude that our approval and adoption of the Settlement is in the public interest.

FINDINGS OF FACT

- 71 Having discussed above in detail the evidence received in this proceeding concerning all material matters the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:
- 72 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electrical companies.
- 73 (2) PacifiCorp is a “public service company” and an “electrical company” as those terms are defined in RCW 80.04.010 and as those terms otherwise are used in Title 80 RCW. PacifiCorp is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation.
- 74 (3) The parties propose to resolve the issues in this proceeding via the Commission’s approval and adoption of their Settlement Stipulation filed on August 25, 2009, which is attached to, and made a part of, this Order.
- 75 (4) The existing rates for electric service provided in Washington by PacifiCorp are insufficient to yield reasonable compensation for the services rendered. PacifiCorp requires prospective relief with respect to the rates it charges for electric service provided in Washington.
- 76 (5) The rates, terms, and conditions of service that result from adoption of the Settlement Stipulation that is attached to this Order results in rates for PacifiCorp that are fair, just, reasonable, and sufficient.

- 77 (6) The costs of PacifiCorp's investments in the Marengo II wind generation project and the Chehalis Generating Plant were prudently made and reasonable, and are used and useful in providing electric service to Washington customers.
- 78 (7) The Chehalis Generating Plant must and does comply with the Greenhouse Gases Emissions Performance Standard in RCW 80.80.040(1).
- 79 (8) The rates, terms, and conditions of service that result from adoption of the Settlement Stipulation are neither unduly preferential nor discriminatory.
- 80 (9) The Commission's approval and adoption of the Settlement Stipulation attached to, and discussed in, the body of this Order are in the public interest.

CONCLUSIONS OF LAW

81 Having discussed above all matters material to this decision, and having stated its findings, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 82 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings. *Title 80 RCW.*
- 83 (2) The rates proposed by tariff revisions filed by PacifiCorp on February 9, 2009, and suspended by prior Commission order, were not shown to be fair, just or reasonable and should be rejected. *RCW 80.28.010.*
- 84 (3) PacifiCorp's existing rates for electric service provided in Washington are insufficient to yield reasonable compensation for the service rendered. *RCW 80.28.010; RCW 80.28.020.*
- 85 (4) PacifiCorp requires relief with respect to the rates it charges for electric service provided in Washington. *RCW 80.01.040; RCW 80.28.060.*

- 86 (5) The Commission determines that the rates resulting from adoption of the Settlement Stipulation filed by the parties to this proceeding are fair, just, reasonable, and sufficient rates that are to be observed and in force under PacifiCorp's tariffs prospectively from an effective date of January 1, 2010, for electric service the Company provides to customers in Washington. *RCW 80.28.020.*
- 87 (6) The costs of PacifiCorp's investments found on the record in this proceeding to have been prudently made and reasonable should be allowed for recovery in rates.
- 88 (7) PacifiCorp should have the opportunity to earn an overall rate of return of 8.06 percent.
- 89 (8) PacifiCorp should be authorized to recover its revenue deficiency of \$13.5 million for electric service, consistent with the terms of this Order and Settlement Stipulation Appendix B.
- 90 (9) The Settlement attached to this Order as Appendix A and incorporated by prior reference, should be approved and adopted.
- 91 (10) The rates, terms, and conditions of service that will result from this Order are neither unduly preferential nor discriminatory. *RCW 80.28.020.*
- 92 (11) The rates, terms, and conditions of service that will result from this Order are fair, just, reasonable, and sufficient. *RCW 80.28.010; RCW 80.28.020.*
- 93 (12) The Commission Secretary should be authorized to accept by letter, with copies to all parties to this proceeding, the revised tariff sheets attached to the Settlement Stipulation as Appendix B.
- 94 (13) The Commission should retain jurisdiction over the subject matters and the parties to this proceeding to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 95 (1) The proposed tariff revisions PacifiCorp filed on February 9, 2009, which were suspended by prior Commission order, are rejected.
- 96 (2) The Settlement Stipulation attached and incorporated into this Order by prior reference, are approved and adopted.
- 97 (3) The Commission Secretary is authorized to accept by letter, with copies to all parties to this proceeding, the revised tariff sheets attached to the Settlement Stipulation as Appendix B.
- 98 (4) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective December 16, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

**Docket UE-090205
Settlement Stipulation**