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 PETITION FOR RECONSIDERATION OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

I. INTRODUCTION

1 Pursuant to WAC § 480-07-850, RCW § 34.05.470, and the notice regarding the timing of post order petitions, the Industrial Customers of Northwest Utilities ("ICNU") files this petition for reconsideration ("Petition") with the Washington Utilities and Transportation Commission ("WUTC" or the "Commission"). ICNU requests reconsideration of the Commission's October 27, 2004 order approving and adopting the settlement agreement ("Settlement") subject to conditions ("Order"). Reconsideration is necessary because the Commission erred when it: 1) included in rates costs that had not been found to be prudently incurred; 2) included in rates the costs associated with generating resources not found to be necessary for providing power to Washington customers; 3) failed to consider whether the Settlement satisfied the previous standard articulated by the Commission, when it allowed PacifiCorp to file a rate case

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despite the five-year Rate Plan ("Rate Plan"); and 4) adopted the Original Protocol as an inter-jurisdictional cost allocation methodology to establish rates, but failed to establish an inter-jurisdictional cost allocation methodology on a going forward basis.

II. BACKGROUND

2 PacifiCorp was authorized to file this general rate proceeding by the Commission in its July 15, 2004 order that amended the five-year Rate Plan.[1/] The Rate Plan barred PacifiCorp from proposing or recommending any changes to the Company's general base rates in Washington prior to July 1, 2005, absent a showing that PacifiCorp satisfied the Commission's standard for interim rate relief.[2/] On August 27, 2004, PacifiCorp, the Natural Resources Defense Council, and Staff entered into the Settlement, which proposed to increase the Company's rates by approximately $15.5 million.[3/] The Order approved the Settlement, subject to conditions, allowing the Company to increase its rates by approximately $15 million, or 7.5%.[4/] In the Order, the Commission found that it need not closely scrutinize the individual adjustments proposed by ICNU, that it was unnecessary to consider the grounds or resolve the issues which were the basis for amending the Rate Plan, and that it was proper to set rates based on the Original Protocol.[5/] In addition, the Order did not address the issue of whether it is legally proper to allow costs associated with eastside generating resources, including the Gadsby, West

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1/ WUTC v. PacifiCorp, Docket Nos. UE-991832 and UE-020417, Sixth/Eighth Suppl. Order, ¶ 15 (July 15, 2003) ("Amending Order").
2/ Id.
3/ Exh. No. 3 at p. 5, ¶ 9 (Settlement).
4/ Order at 1.
5/ Id. at ¶¶ 41, 43, 46-48, 50, 56, 61-62.

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Valley, Craig, Hayden, Cholla and Foote Creek generating plants, to be included in rates when the Commission has not found those costs to be prudently incurred.

III. ARGUMENT

1. Legal Standard

3 The Commission may grant reconsideration of a final order if a party files a request stating the specific grounds upon which relief is requested within ten days of service of the order.[6/] Reconsideration may be granted if the petitioner identifies portions of the order that are erroneous or incomplete.[7/] The purpose of a petition for reconsideration is to request that the Commission change the outcome regarding one or more issues in the final order.[8/]

2. It Is Illegal for the Commission to Increase Rates Without a Prudence Determination

4 The Commission's Order is incomplete and erroneous because it allows PacifiCorp to include costs in rates without a finding that they were prudently incurred or necessary to serve Washington ratepayers. Specifically, the Commission did not rule on whether significant PacifiCorp costs related to the Gadsby, West Valley, Craig, Hayden, Cholla, and Foote Creek generating plants were prudent before including them in rates, but rather concluded "that the overall result in terms of revenue requirement is reasonable . . . ."[9/] Eastern control area resources are included in rates because the Settlement

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6/ RCW § 34.05.470; . WUTC v. PacifiCorp, Docket No. UE-032065, Notice (Oct. 27, 2004) (the Administrative Law Judge shortened the period to 5 days).
7/ WAC § 480-07-850(2).
8/ WAC § 480-07-850(1).
9/ Order at ¶ 62.

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adopted an overall power cost amount that did not exclude these resources.[10/] This is inconsistent with Washington law, which imposes a duty on the Commission to ensure that utility rates do not include improper costs, including the costs associated with imprudent utility decisions.[11/] The Order violated this fundamental regulatory principle by including in rates: 1) the costs associated with new resources that had not been determined to be prudent;[12/] and 2) approximately $8.9 million in costs that ICNU demonstrated were nonrecurring, imprudent, or unbeneficial to ratepayers.[13/] Moreover, there is insufficient evidence in the record upon which the Commission could have made a prudency determination regarding eastern control area resources because the issue has not been fully litigated.

5 Washington law imposes a duty on the Commission to ensure that utility rates are fair, just, reasonable, and sufficient.[14/] The Washington Supreme Court has recognized that the Commission can include costs in rates if the Commission finds that the costs were prudently incurred.[15/] Specifically, under the just and reasonable standard, the Court explained that the Commission "is empowered to allow a utility to amortize to expense costs incurred in an abandoned electrical generating project, if the project was

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10/ *See* Exh. No. 1 at 14-15 (Braden et al.); Exh. No. 3 at 10(c) (Settlement); TR. 535: 2-23 (Falkenberg).

11/ *See* Re Puget Sound Power & Light Co., Docket Nos. UE-920433, UE-920499, and UE-921262, Eleventh Suppl. Order at 23 (Sept. 21, 1993).

12/ Order at ¶¶ 56, 61, 62; ICNU Brief at 15-17.

13/ Order at ¶¶ 56, 61, 62; ICNU Brief at 28-40.

14/ RCW § 80.28.010.

15/ *See* People's Org. for Wash. Energy Resources v. WUTC, 104 Wash.2d 798, 805, 711 P.2d 319 (1985).

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prudently undertaken and terminated by the utility . . . ."[16/] Similarly, this Commission has recognized that to include the costs of resources in rates without a prudence determination would "violate the Commission's duty to ensure that rates are based on prudent costs."[17/]

6 Instead of ruling on whether significant PacifiCorp costs were prudent, the Commission found that "close scrutiny of the individual adjustments is not required" because the Commission believed that the overall result was "reasonable" and "within the range of what is supported by the evidence."[18/] The Commission justified its refusal to evaluate the prudence of certain costs based upon a legal conclusion that its "overarching concern" regarding a utility's revenue requirement "is with the end results produced under the settlement."[19/]

7 The Commission fails to recognize that, when setting utility rates, in addition to the "end results" test and the prohibition on confiscatory rates, it must also consider important statutory requirements that prevent customers from paying for inappropriate and imprudent costs. Washington Courts have overturned Commission decisions when the Commission acted outside of its statutory authority to increase rates by including costs not permitted under the law. For example, the Washington Supreme Court overruled the Commission's decision to include construction work in progress ("CWIP") in a rate base because, under the then existing statute, CWIP could not be

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[16/] Id.
[17/] Re Puget Sound Power & Light Co., Docket Nos. UE-920433, UE-920499, and UE-921262, Eleventh Suppl. Order at 23 (Sept. 21, 1993).
[18/] Order at ¶¶ 56, 61-62.
[19/] Id. at ¶¶ 52-54.

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considered "used and useful."[20/] The Court also rejected the Commission's decision to allow utilities to include charitable contributions in rates because, under the statutory requirement that rates must be fair, just, and reasonable, these non-beneficial costs must be paid by shareholders, not customers.[21/] The requirement that all costs must be prudently incurred is also based on the statutory requirement that rates must be fair, just, and reasonable.[22/] Therefore, in addition to evaluating the "end result," the Commission must also consider whether utility rates include imprudent costs that cannot legally be passed on to ratepayers.

8 The Commission should reconsider its Order to review the PacifiCorp costs that have not been established to be prudently incurred. As the Order now stands, PacifiCorp will be able to argue that the Commission found these eastside generating resources to be prudent because the costs were included in rates in the Order approving the Settlement. Specifically, the Commission should reconsider its decision to authorize PacifiCorp to: 1) include the costs associated with new resources acquired in the Company's eastern control area that have not been found to be prudent;[23/] and 2) increase rates without addressing the evidence that approximately $8.9 million of the Company's costs are imprudent, nonrecurring, or not beneficial.[24/] Including these costs in rates without a finding that they are properly allocable to ratepayers violates the Commission's statutory obligation to ensure that rates are fair, just, and reasonable.

[20/] People's Org. for Wash. Energy Resources v. WUTC, 101 Wn.2d 425, 434, 679 P.2d 922 (1984).
[21/] Jewell v. WUTC, 90 Wn.2d 775, 777-78, 585 P.2d 1167 (1978).
[22/] *See* People's Org. for Wash. Energy Resources, 104 Wash.2d at 805.
[23/] Order at ¶¶ 61-62; Exh. No. 3 at ¶ 10(c) (Settlement).
[24/] Order at ¶¶ 61-62; ICNU Brief at 7, 28-40.

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3. It Is Arbitrary and Capricious for the Commission to Increase PacifiCorp's Rates Without Addressing the Reasons It Allowed PacifiCorp to File a General Rate Case

9 In the Order, the Commission found that it was unnecessary to resolve the issues that the Commission sought to address in the general rate case when it issued its order amending the Rate Plan.[25/] The Commission found that the Amending Order authorized "a general rate filing by PacifiCorp—nothing more, and nothing less."[26/] Furthermore, the Order concluded that there was nothing in the Amending Order that would preclude rate relief if PacifiCorp's earnings exceeded what the Company expected under the Rate Plan or if inter-jurisdictional cost allocation issues are not resolved.[27/] These conclusions are legally erroneous because they fail to consider the circumstances that led to the filing of this general rate case. Specifically, the Commission fails to address whether the purpose for breaking the five-year Rate Plan was achieved in this proceeding. The Commission found that, in invalidating the five-year Rate Plan, customer benefits were preserved.[28/] Instead, customers are now subject to a $15 million rate increase, a black box settlement on rate of return, and no resolution of the issues related to the inter-jurisdictional cost allocation methodology. The Commission should articulate how customers are benefited by its decision to break the five-year Rate Plan.

10 This proceeding is not a typical general rate proceeding. PacifiCorp was only allowed to file a rate case because the Commission eliminated the two-year rate

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[25/] Order at ¶¶ 41-43.
[26/] Id. at ¶¶ 42, 48.
[27/] Id. at ¶¶ 41-43; Amending Order at ¶¶ 30-31, 38-39, 41.
[28/] Amending Order at ¶ 41.

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freeze that customers had bargained for under the Rate Plan. In the Amending Order, the Commission found that the requirement prohibiting PacifiCorp from filing a general rate case, unless it was experiencing a need for interim rate relief, had become "contrary to the public interest because it does not permit adequate oversight by the Commission to ensure that the Company's rates will remain fair, just, reasonable, and sufficient through the end of the Rate Plan Period."[29/] The Commission concluded that it was unable to properly review the Company's rates because the black box Settlement in PacifiCorp's last rate proceeding did not establish an authorized rate of return or an appropriate power cost baseline, address the prudency of certain generating resources, resolve inter-jurisdictional cost allocation issues, or comprehensively review PacifiCorp's operations.[30/] However, the Commission acknowledged in the Order that this Settlement also produced a "black box" settlement.[31/] It is unclear how this black box settlement satisfies the Commission's need to review and establish a revenue requirement based on specific cost levels. This Settlement only serves to duplicate the issues that were present when the Commission initially considered PacifiCorp's request for a power cost deferral.

11 In the Order, the Commission acknowledged that it did not review whether PacifiCorp's earnings would have been sufficient under the Rate Plan, review the prudence of all of PacifiCorp's generating facilities, adopt a return on equity, or approve a permanent inter-jurisdictional cost allocation methodology.[32/] Increasing rates without

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[29/] Amending Order at ¶ 49.
[30/] Id. at ¶¶ 3, 23, 26, 30-31, 38-41, 43.
[31/] *See* Order at ¶¶ 61-62, 65.
[32/] Id. at ¶¶ 41-42, 51, 61-62.

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resolving the concerns that were the grounds for amending the Rate Plan in the first place eliminates customers' two-year rate freeze without an adequate justification.

12 The Commission amended the Rate Plan based on its concern that PacifiCorp might not earn a reasonable return in the final two years of the Rate Plan period.[33/] In the Amending Order, the Commission specifically directed the parties in the general rate case proceeding to address the issue of PacifiCorp's earnings during the last years of the Rate Plan.[34/] However, in the Order, the Commission found that there was nothing in the Amending Order that "ties what may be found in this case to be a reasonable return to anyone's expectations under the Rate Plan."[35/] If the basis upon which the Commission authorized PacifiCorp to file a general rate case was a concern regarding the Company's financial condition, then this concern should have guided its consideration of whether to grant rate relief. Because it failed to address this and other central issues, the Commission ignored the reasons for breaking the Rate Plan and unnecessarily eliminated the customer benefits provided in the Rate Plan.

4. Use of the Original Protocol in the Settlement Inappropriately Increases Customer Rates

13 The Commission should reconsider the adoption of rates based on the Original Protocol. The Commission accepted the use of the Original Protocol in the Settlement because it was "a significant intermediate step toward an enduring solution"

33/ Amending Order at ¶¶ 38, 41.
34/ Id. at ¶¶ 38-39.
35/ Order at ¶ 41.

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and was the means to the end of "a compromise on revenue requirement . . . ."[36/] In accepting the Original Protocol, the Commission rejected ICNU's request to use the Revised Protocol (with conditions) and concluded that the use of the "Protocol in the Settlement Agreement . . . does not mean that more costs are being allocated to Washington rates under the settlement than would be the case" under a different allocation methodology.[37/]

14 The Commission's conclusion that using the Original Protocol would not increase customer rates compared to other cost allocation methodologies is erroneous.[38/] The Original Protocol increased customer rates more than any of the other methodologies supported by other parties in this proceeding (the Revised Protocol, Control Area, or Situs methodologies).[39/] The Commission justified use of Original Protocol by the fact that the Settlement obtained an overall $10 million reduction in the Company's revenue increase request.[40/] PacifiCorp rarely, if ever, receives its filed-for revenue requirements from any of the Commissions; therefore, this is not a valid basis for comparison. The fact that the Settlement was less than the amount PacifiCorp requested is irrelevant. The Settlement made specific reductions to PacifiCorp's as filed Company-wide revenue requirement and cost of capital calculated on the basis of the Original Protocol that equaled $10 million.[41/] The overall revenue impact of these specific reductions would have been greater had the Commission adopted the Revised Protocol; thus, more costs are

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[36/] Id. at ¶ 50.
[37/] Id. at ¶¶ 46 n.35, 47.
[38/] Id.
[39/] *See, e.g.,* TR. 537: 17 – 538: 1 (Falkenberg).
[40/] Id. at ¶ 47.
[41/] *See* Exh. No. 3 at ¶ 8(a) & (b) (Settlement).

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being allocated to Washington ratepayers because the Original Protocol was used as the allocation methodology in the Settlement.[42/]

15 The Commission should also reconsider its decision not to adopt the Revised Protocol with ICNU's conditions "because such a step is not supported by a fully developed record."[43/] The Commission based this finding upon the fact that Staff "has not undertaken a thorough review of Revised Protocol."[44/] The Commission should not deny ratepayers or the Company the benefits of the Revised Protocol simply because Staff chose not to fully investigate critical issues in this proceeding. There is no legal requirement that the Commission cannot accept a methodology simply because Staff has decided not to review it. This is a particularly inappropriate basis upon which to reject the Revised Protocol when Staff's failure to thoroughly review the Company's resources in the eastern control area did not prevent the Commission from including these costs in rates.

16 More importantly, the Revised Protocol has been more fully developed through the Multistate Process ("MSP") than any other cost allocation methodology in the record. The Original Protocol is a flawed and obsolete cost allocation methodology that has been abandoned by the Company in all of its jurisdictions except Washington.[45/] The record in this proceeding regarding the Original Protocol is undeveloped—neither Staff nor Public Counsel proposed significant adjustments or refinements to the

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42/ TR. 204: 1-6 (Furman), 540: 18-25 (Falkenberg).
43/ Order at ¶ 46 n.35.
44/ Id.
45/ Exh. No. 12 at 20 (Transcript of Oral Argument – MSP Hearing, Oregon Public Utility Commission Docket No. UM 1050); TR. 538: 2-13 (Falkenberg).

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methodology, because they proposed their own cost allocation methodologies. In contrast, the Revised Protocol has been fully reviewed by PacifiCorp and ICNU, both of whom have found it to be more beneficial to ratepayers and the Company.[46/] It is difficult to conceive why the Commission would deny ratepayers the lower revenue requirement based on the Revised Protocol during this temporary period until a permanent methodology is adopted, particularly because customers were not supposed to see any revenue requirement increase during this time period under the five-year Rate Plan.

17 Thus, the Revised Protocol would be a reasonable inter-jurisdictional cost allocation methodology for the purposes of this proceeding. The Commission has declined to establish a permanent cost allocation methodology, and instead required the Company to conduct additional proceedings with the intent "to resolve inter-jurisdictional cost allocation in Washington."[47/] The Commission should reconsider its use of the Original Protocol because the Revised Protocol is the most developed, appropriate, and beneficial cost allocation methodology, and would be a significant intermediate step towards a permanent solution.

III. CONCLUSION

18 The Commission should grant ICNU's petition to reconsider its Order to correct errors of fact and law contained therein. Specifically, the Commission should reconsider its erroneous and incomplete decisions to: 1) include costs in rates that have

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[46/] Exh. No. 310 at 1 (Taylor); Exh. No. 32 at 7 (Furman); TR. 537: 17 – 538: 1, 540: 23-25 (Falkenberg); Exh. No. 401C at 61-63 (Falkenberg).

[47/] Order at ¶ 51.

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not been found to be prudent or beneficial to ratepayers; 2) grant a rate increase without determining whether the underlying reasons for amending the Rate Plan had been met; and 3) decline to utilize the Revised Protocol as a cost allocation methodology to calculate rates in this proceeding. The Commission should correct these errors by amending its Order to either reject the Settlement, or approve the Settlement subject to the condition that it utilize the Revised Protocol (with ICNU's proposed conditions) and adopt ICNU's and Public Counsel's revenue requirement adjustments.

DATED this 3rd day of November, 2004.

Respectfully Submitted,

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