[Service Date November 10, 2004]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET NO. UE-032065
Complainant,	)	ORDER NO. 07
v.	)	
PACIFICORP d/b/a PACIFIC POWER & LIGHT COMPANY	)	GRANTING CLARIFICATION, DENYING MOTION FOR STAY, AND DENYING PETITIONS FOR RECONSIDERATION
Respondent.	)	

Synopsis: *The Commission clarifies Order No. 06 in light of a demonstrated error in an accounting calculation that is reflected in the Order. PacifiCorp is authorized to recover an additional $15,501,000 in revenue, as provided in the Settlement Agreement the Commission approved and adopted in Order No. 06.*

SUMMARY

1 **PROCEEDINGS:** The Commission entered in this proceeding on October 27, 2004, its Order No. 06 Approving and Adopting Settlement Agreement Subject to Conditions; Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing. The Commission simultaneously issued a Notice requesting parties to file any motions for clarification or petitions for reconsideration by November 3, 2004. PacifiCorp filed a Motion for Clarification. Public Counsel filed a Motion To Stay and a Petition for Reconsideration. ICNU filed a Petition for Reconsideration. On November 8, 2004, the Commission conducted a duly noticed order conference as provided under WAC 480-07-840.

2 **PARTIES:** James M. Van Nostrand, George M. Galloway, and Stephen C. Hall, Stoel Rives LLP, Seattle, Washington, and Portland, Oregon, represent PacifiCorp. Melinda Davison, S. Bradley Van Cleve, and Irion Sanger, Davison Van Cleve PC, Portland, Oregon, represent the Industrial Customers of Northwest Utilities ("ICNU"). John O'Rourke, Program Director, Spokane, Washington, represents the Citizens' Utility Alliance of Washington ("Alliance"). Ralph Cavanagh, Northwest Project Director, San Francisco, California, represents the Natural Resources Defense Council ("NRDC"). Chuck Ebert, Bellingham, Washington, represents the Energy Project, Opportunity Council, Northwest Community Action Center, and Industrialization Center of Washington (collectively "Energy Project"). Robert Cromwell, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section of the Washington Office of Attorney General. Shannon Smith, Assistant Attorney General, Olympia, Washington, represents the Commission Staff.

3 **COMMISSION DECISIONS:** The Commission clarifies Order No. 06 in light of the analyses provided in the Company's Motion, and discussion had during the order conference on November 8, 2004. The Commission denies Public Counsel's Motion To Stay, denies Public Counsel's Petition for Reconsideration, and denies ICNU's Petition for Reconsideration.

MEMORANDUM

I. PacifiCorp's Motion for Clarification.

4 The Commission determined in Order No. 06 that its approval and adoption of a proposed multi-party Settlement Agreement, with conditions, would provide a reasonable resolution of the issues in this proceeding and would be in the public interest. The Commission concluded that the end result produced by the settlement would be rates for prospective application that are fair, just, reasonable, and sufficient.

5 The Commission conditioned its approval and adoption of the Settlement Agreement by rejecting certain provisions. Specifically, the Commission determined that it would not approve and adopt the proposed accounting treatment of Trail Mountain and environmental remediation costs set forth in ¶12.b. and ¶12.c. of the Settlement Agreement. The Settlement Agreement proposed deferral accounting treatment for these costs without providing adequate support for such treatment. Moreover, our consideration of deferral accounting treatment for these costs already was, and is, pending in separate, unconsolidated Docket Nos. UE-031657 and UE-031658, which were filed on October 13, 2003.

6 Based on examination of the Settlement Agreement and Exhibit No. 4, a joint exhibit (*i.e.*, one sponsored by PacifiCorp and Staff witnesses) offered in support of the settlement, it appeared that one effect of rejecting ¶¶ 12.b and 12.c. would be to reduce the revenue deficiency proposed via the Settlement Agreement. We stated in paragraph 64 of Order No. 06, as follows:

> 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.

It is now apparent from PacifiCorp's Motion for Clarification and from the discussion during our order conference on November 8, 2004, that we erred in attempting to apply our determination via an accounting analysis based on data provided in Exhibit No. 4. We are persuaded that the matter is more complicated from an accounting perspective than we had perceived. We find, based on reevaluation of Exhibit No. 4 and certain underlying data, that removal

of the costs associated with Trail Mountain and environmental remediation would not have the effect of reducing the proposed revenue requirement. Accordingly, we determine that we should correct our erroneous application of principle to data, as reflected in Order No. 06, by making the following changes to the Order:[1]

(1) We delete the final sentence in ¶ 64 and substitute the following: **Because the accounting effect of this removal does not reduce the revenue requirement, we will approve a revenue requirement of $15.5 million as proposed under the Settlement Agreement.**

(2) We modify ¶ 77 (*i.e.*, seventh finding of fact) to read: **The Commission's rejection of the requests in ¶¶ 12.b. and 12.c. of the Settlement Agreement does not have the effect of reducing the proposed revenue deficiency.**

(3) We modify ¶ 79 (*i.e.*, ninth finding of fact) to read: **The rates, terms, and conditions of service that result from this Order, based on a revenue deficiency of $15,501,000, are fair, just, reasonable, and sufficient. *RCW 80.28.010; RCW 80.28.020.***

(4) We modify ¶ 87 (*i.e.*, sixth conclusion of law) to read: **The multi-party Settlement Agreement filed by PacifiCorp, Staff, and NRDC on August 27, 2004, which is attached to this Order as Appendix A and incorporated by reference as if set forth in full in the body of this Order, considered as a whole, and in its individual parts as discussed and conditioned in the body of this Order, is in the public interest. The Commission should approve and adopt the Settlement**

[1] Although the Synopsis section merely reflects the determinations made in the Order, its final sentence should be changed to read: *The resulting increase in rates will allow PacifiCorp to recover an additional $15,501,000 in revenue, representing an increase in rates of approximately 7.5 percent.*

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. ***WAC 480-09-465; WAC 480-090-466.***

(5) We modify ¶ 94 (i.e., second ordering paragraph) to read: **The Settlement Stipulation filed by PacifiCorp, Staff, and NRDC on August 27, 2004, which is attached to this Order as Appendix A and incorporated by reference as if set forth in full in the body of this Order, is approved and adopted as a full and final resolution of this general rate proceeding, subject to the clarifications, modifications, and conditions stated in the body of this Order.**

II. Motion To Stay

7 Public Counsel moves us to stay the effect of Order No. 06 pending our decision on Public Counsel's Petition for Reconsideration and the Court's resolution of Public Counsel's pending appeal in Division Two of the Washington State Court of Appeals of the Commission's final order in Docket UE-020417, which permitted this general rate case proceeding to be filed with the Commission. Public Counsel states that it may appeal our decision in this proceeding as well. Public Counsel's entire argument is that "a stay of the effect of the Commission's final order would be in the public interest to avoid the risk of over-collection of rates."

8 Public Counsel posits a *risk* on the one hand, but we see a *certainty* on the other. That is, to the extent there even arguably is a "risk of over-collection" from customers if we allow rates to go into effect that ultimately are determined by a court to be unlawful for reasons unrelated to the Company's demonstrable need for revenue at the level approved, it is certainly true that granting a stay would ensure that the Company would not collect the revenue requirement we have

determined is appropriate on the basis of an extensive record. Public Counsel makes no effort to address the point that there is a balance that we must effect between the interests of the ratepayers and the Company's demonstrated need for revenue.[2]

9 Public Counsel ignores the point that we have found in this proceeding, on the basis of a fully developed record, that PacifiCorp's rates are not producing revenue sufficient to meet the Company's demonstrated revenue requirements. Given that finding, there is no true "risk of over-collection." While we acknowledge the pendency of Public Counsel's appeal of the Commission's final order in Docket UE-020417, that appeal concerns the propriety of our decision to authorize PacifiCorp to file for revised rates at this time, not the merits of PacifiCorp's financial condition. We determined on the record in Docket No. UE-020417 that PacifiCorp should be authorized to make a general rate filing. PacifiCorp made that filing in this docket. We have considered the record in this proceeding and determined results that are in the public interest. We cannot simply postpone indefinitely the satisfaction of our statutory responsibilities to establish rates for PacifiCorp that are fair, just, reasonable and sufficient, and to allow the Company to collect the revenues that we have found on the record in this proceeding are appropriate and necessary under that standard.

10 We conclude for these reasons that we should deny Public Counsel's Motion To Stay.

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[2] *See* discussion and notes at ¶34 of Order No. 06.

III. Petitions for Reconsideration

11 Public Counsel and ICNU argue that the Commission cannot lawfully approve rates and defer to another proceeding the question of prudence concerning resources that the utility has acquired since the company's assets were last subject to being challenged on the basis of prudence in Docket No. UE-991832. This is a rather startling proposition, coming as it does from two of the parties to the settlement of PacifiCorp's general rate proceeding in that docket. That settlement, which we approved and adopted as a reasonable resolution of the issues in that proceeding, not only established the Rate Plan of which we have heard so much in this docket, but also expressly deferred our consideration of the prudence of PacifiCorp's generating resources. Specifically, the Commission's Final Order in Docket No. UE-991832 states:

> Four matters are deferred under the Comprehensive Stipulation. Under Section 6, the Parties commit to initiate, within 30 days after Commission approval of the stipulation, a process to examine the prudence of PacifiCorp's generation facility resource acquisitions since its last general rate proceeding in Cause No. U-86-02 that are included in PacifiCorp's filing in this proceeding. Six principal generating assets are involved. . .
>
> The process contemplated under the Comprehensive Stipulation is to be completed by October 1, 2001, and will result in a "Joint Report" from the Parties to the Commission. If the Parties fail to agree about the prudence of a particular resource acquisition, separate statements of position may be provided to the Commission. The Joint Report is required to be presented to the Commission as part of PacifiCorp's next general rate proceeding. Before then, PacifiCorp may take action in response to the Joint Report, but any such action will not affect the rates established under the Stipulation.

The six generating assets referred to are the Craig, Hayden, Cholla, Hermiston, James River, and Foote Creek generating units. The process described above—a process agreed to by ICNU and Public Counsel and approved and adopted by the Commission at their urging—has been followed. The Joint Report is part of our record here.[3] We have additional evidence, and Staff's agreement based on its analyses, that Hermiston and James River were prudently acquired for purposes of serving Washington customers. No party contested the prudence of these resources in this proceeding. As to the remaining resources, and additional resources (*i.e.*, West Valley and Gadsby), the settlement agreement simply defers to another day a determination of whether these resources were prudently acquired and included in rate base for purposes of setting Washington rates.

12 Some parties may be dissatisfied that we were not able to make final prudence determinations concerning all of PacifiCorp's resources in this proceeding, but it is not unlawful for us to resolve the question of just, reasonable, and sufficient rates without having fully achieved that goal. By approving the Settlement Agreement here, we reserve any issues concerning the prudence of Craig, Hayden, Cholla, Foote Creek, West Valley and Gadsby for future proceedings. [4]

13 Since we reject the argument that we must expressly find each and every resource PacifiCorp has acquired since 1986 prudent in this proceeding before allowing rate relief, we need not, and do not reach Public Counsel's argument that our record is not adequate to make such a determination. It is noteworthy,

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[3] Exhibit No. 134.

[4] We note that reserving the determination of prudence concerning specific resources in this proceeding may provide a significant opportunity to Public Counsel and ICNU. Either or both of these parties may wish to put on a fully developed case contesting the prudence of these resources in a future proceeding. They did not do so here. In this connection, ICNU's concern that Order No. 06 means "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" is misplaced. Not only is the prudence issue reserved for future consideration under the terms of the Settlement Agreement, but also the Settlement Agreement provides by its express terms that it is in no sense determinative or even suggestive of any "facts, principles, methods or theories employed in arriving at the terms of this Settlement Agreement."

however, that were we required to determine prudence on the basis of the record before us, we would be doing so with uncontested evidence in the form of the Joint Report that shows the prudence of many of these resources on a system-wide basis.[5]

14 Public Counsel's final argument in this connection is that we "must reconcile" our decision to not approve deferred accounting treatment of Trail Mountain and environmental remediation costs, as proposed in ¶12 of the Settlement Agreement, with our decision on issues related to generating assets in PacifiCorp's eastern control area, as provided in ¶10 of the Settlement Agreement. In the case of Trail Mountain and environmental remediation costs, acceptance of ¶¶12.b and 12.c would have required affirmative action by the Commission. Specifically, those paragraphs asked the Commission to enter accounting orders approving deferred accounting treatment, without consolidating the dockets where the question of such accounting treatment for these costs is pending, and without a fully developed record. We did not accept these recommendations and reserved decision pending full consideration of the issues in the pending accounting petition dockets. As to the eastern control area generating assets, we approved language that expressly reserves consideration of the prudence of these assets and such of their costs as may be allocated to Washington rates to other dockets that will be before us in the future. In short, there is no inconsistency to be resolved.

15 ICNU expressed on brief and expresses again via its Petition its concerns that Order No. 06 does not finally resolve the question of interjurisdictional cost allocation. As we said in Order No. 06, the settlement resolution and the parties' commitments to further process outside the context of this litigated proceeding represent significant and satisfactory progress toward enduring solutions to long-term, complex issues that have been points of contention among the parties

[5] Exhibit No. 134; Exhibit No. 1 (Joint Testimony) at 14:15—16:26.

here, and others, for nearly two decades. The evidence in this proceeding shows that PacifiCorp has made significant progress during the period that this proceeding has been underway toward a solution to interjurisdictional cost allocation that may be acceptable in all of the jurisdictions in which PacifiCorp does business. Though perhaps close in one or more jurisdictions, the matter had not been finally resolved at the time of our evidentiary hearing in any of the states where PacifiCorp provides service. With the matter nearing resolution in other states, the settling parties agreed to a definite process for moving to a solution in Washington in the near term. In lieu of the process that will begin immediately after this proceeding as required in Order No. 06, however, ICNU urges us to simply adopt the interjurisdictional allocation methodology referred to as "Revised Protocol," albeit with significant modifications urged by ICNU. Thus, ICNU would have us act on this important issue without the benefit of a full record on the proposed allocation methodology or on ICNU's proposed modifications to it. We will require such a record before we will finally resolve this issue, and we expect to have such a record under the process discussed in Order No. 06.

16 Our consideration of the settlement here is in the context of a fully developed record that supports the results in terms of revenue requirement, including overall return, and the other operational elements that produce the rates we find to be fair, just, reasonable, and sufficient. ICNU essentially repeats its arguments made on brief that this is insufficient—that this general rate proceeding should be evaluated under a higher standard of review than is required in other cases. ICNU asserts that we imposed conditions by our Final Order in Docket No. UE-020417 that we did not impose. As we said in Order No. 06, what we authorized in Docket No. UE-020417 was for the Company to make a general rate filing. The Company made its filing, as authorized, and we have considered it under the statutory standards by which we are required to establish rates. Contrary to ICNU's assertions, there is nothing "legally erroneous" in our process or our decisions.

17 In sum, Public Counsel and ICNU make essentially the same arguments in their respective Petitions that they made in their briefs. We fully considered these arguments when we resolved this proceeding by our Order No. 06. We see no basis upon which to reconsider our determinations in Order No. 06.

ORDER

THE COMMISSION ORDERS THAT:

18 (1) Order No. 06, entered in this proceeding on October 27, 2004, is clarified as discussed in the body of this Order.

19 (2) Public Counsel's Motion To Stay is denied.

20 (3) Public Counsel's Petition for Reconsideration is denied.

21 (4) ICNU's Petition for Reconsideration is denied.

22 (5) PacifiCorp is authorized and required to file tariff sheets following the effective date of this Order that are necessary and sufficient to effectuate its terms and our prior orders in this proceeding. The required tariff sheets must be filed by November 12, 2004, and shall bear an effective date of November 16, 2004.

23 (6) The Commission Secretary is authorized to accept by letter, with copies to all parties to this proceeding, a filing that complies with the requirements of this Order.

24 (7) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective this 10th day of November, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner