

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	
)	
v.)	
)	
PACIFICORP d/b/a PACIFIC POWER &)	DOCKET NOS. UE-061546 and
LIGHT COMPANY,)	UE-060817
)	
Respondent.)	MOTION TO STRIKE OF THE
)	INDUSTRIAL CUSTOMERS OF
In the Matter of the Petition of)	NORTHWEST UTILITIES
)	
PACIFICORP d/b/a PACIFIC POWER)	
AND LIGHT COMPANY,)	
)	
For an Accounting Order Approving)	
Deferral Of Certain Costs Related to the)	
MidAmerican Energy Holdings Company)	
Transition)	
_____)	

1 Pursuant to WAC § 480-07-375, the Industrial Customers of Northwest Utilities (“ICNU”) submits this motion (“Motion”) requesting that the Washington Utilities and Transportation Commission (“WUTC” or the “Commission”) strike PacifiCorp’s Reply Brief. PacifiCorp’s Reply Brief, when properly formatted, exceeds the ten-page size threshold established by Administrative Law Judge (“ALJ”) Moss by at least three pages. ICNU requests that the Commission strike the entire brief or strike the last three pages that exceed the limit.

I. BACKGROUND

2 The original schedule in this proceeding included one round of
simultaneous legal briefing.^{1/} After a request from Staff, the ALJ allowed all parties to
file a ten-page Reply Brief.^{2/} All parties filed Opening Briefs on April 23, 2007, and
Reply Briefs on May 7, 2007. On May 8 and 9, 2007, ICNU communicated with
PacifiCorp to provide the Company an opportunity to correct its oversized Reply Brief,
but was unable to reach an agreement.

II. ARGUMENT

3 PacifiCorp's Reply Brief exceeds the established page length by at least
three pages and should be stricken. PacifiCorp exceeded the established page length by
at least 30% by changing the spacing and by employing "word compression" of its brief.

4 The Commission's administrative rules establish the proper format for
briefs.^{3/} The rule requires, *inter alia*, for briefs to be "double-spaced, 12-point palatino,
times new Roman, or an equally legible serif font"^{4/}

5 PacifiCorp's Reply Brief is not double-spaced. The spacing between lines
is actually 24 points instead of 28 points, closer to one and a half lines than two lines of
spacing. PacifiCorp also manipulated the font spacing to decrease the amount of pages in
its Reply Brief. Instead of using the normal spacing between characters, PacifiCorp
condensed the spacing by 0.5 points. The text must be specifically formatted to be

^{1/} WUTC v. PacifiCorp, Docket No. UE-061546, Order No. 3 at ¶ 7 (Oct, 20, 2006).

^{2/} TR 346: 17-19 (ALJ Moss).

^{3/} WAC § 480-07-395(1).

^{4/} Id.

condensed. Thus, the Reply Brief cannot be considered in Times New Roman or a similarly legible font. We have attached PacifiCorp's Reply Brief in the proper format to demonstrate its violation of the Commission's rules.

6 PacifiCorp's Opening and Reply Briefs include other tools to decrease the length of its brief. For example, PacifiCorp appears to have perfected a new practice of placing significant portions of its argument in its footnotes, which are typically reserved for citations and minor clarifications. Incorporating the footnote text in the main body of the Reply Brief would further increase its size. In addition, even with the reduced line spacing and character spacing, PacifiCorp's Reply Brief exceeds the ten-page limit because the signature page, which is traditionally considered part of a brief, appears completely on page number 11.

7 A comparison of the number of words in PacifiCorp's and ICNU's briefs illustrates how the Company is misusing the Commission's formatting requirements to increase the size of its briefs. Not including the cover pages, tables of contents and tables of authorities, PacifiCorp's Reply Brief is 2,933 words and its originally filed Opening Brief is 17,524 words. In comparison, ICNU's ten-page Reply Brief is 2,296 words and its Opening Brief is only 13,109 words. Similarly, Staff's Reply Brief is 2,407 words and its Opening Brief is 14,202 words. Thus, ICNU's properly formatted Opening Brief was only 75% of the size of PacifiCorp's and ICNU's properly formatted Reply Brief is only 78% the size of PacifiCorp's while utilizing the same number of pages.

8 PacifiCorp could have easily met the ten-page limit for its Reply Brief by removing the unprofessional and irrelevant comments like ICNU and Public Counsel's

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“advocacy spins out of orbit (*i.e.* it has ‘slipped the surly bonds of earth’), and is worthy of no serious consideration”^{5/} and the Company’s references to inaccurate information that is not in the record, including the erroneous claim that ICNU and Public Counsel have refused “to engage in any form of constructive dialog regarding development of an acceptable inter-jurisdictional cost allocation methodology”^{6/}

9 All parties, including those with the burden of proof, should follow the Commission’s rules, which provide that the Commission may return a pleading for correction when the pleading is defective or insufficient.^{7/} PacifiCorp is likely to argue that its oversized Reply Brief should not be stricken because the Commission liberally construes all pleadings to disregard errors or defects that do not affect the substantial rights of the parties.^{8/}

10 This exception does not apply in this case. The substantial rights of ICNU have been harmed because PacifiCorp abused the formatting requirements to obtain an additional opportunity to argue its case to the Commission. PacifiCorp’s adjustments to its Reply Brief were not inadvertent “errors,” but a deliberate attempt to manipulate the formatting requirements to decrease the size of its Reply Brief. For example, PacifiCorp also adjusted the character spacing to reach the 60-page limit for its Opening Brief. The character spacing in the Opening Brief is condensed by 0.1 points as compared to 0.5 points in its Reply Brief. All other parties to this proceeding followed the Commission’s

^{5/} PacifiCorp Reply Brief at 1-2 (foot note omitted).

^{6/} Id. at 1.

^{7/} WAC § 480-07-395(3).

^{8/} WAC § 480-07-395(4).

formatting requirements. These requirements exist in order for all parties to be given an equal opportunity to argue their case.

III. CONCLUSION

11 ICNU respectfully requests that the Commission strike PacifiCorp's Reply Brief in its entirety, or strike the last three pages, or give PacifiCorp an opportunity to reduce, but not re-write, its Reply Brief in conformance with the Commission's rules.

Dated this 9th day of May, 2007.

Respectfully submitted,

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