

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

WASHINGTON UTILITIES AND)	
TRANSPORTATION)	
COMMISSION,)	
)	
Complainant,)	
)	
v.)	DOCKET UE-061546
)	
PACIFICORP D/B/A PACIFIC)	
POWER & LIGHT COMPANY,)	
)	
Respondent.)	
.....)	
In the Matter of the Petition of)	DOCKET UE-060817
)	
PACIFIC POWER & LIGHT)	ORDER 07
COMPANY)	
)	
For an Accounting Order Approving)	DENYING ICNU's MOTION TO
Deferral of Certain Costs Related to)	STRIKE PACIFICORP'S REPLY
the MidAmerican Energy Holdings)	BRIEF
Company Transition.)	
.....)	

MEMORANDUM

- 1 The Commission conducted evidentiary hearings in these consolidated dockets on March 27, 2007, in Olympia, Washington. The parties filed initial briefs on April 24, 2007, and reply briefs on May 8, 2007. On May 10, 2007, intervenor Industrial Customers of Northwest Utilities filed a motion to strike PacifiCorp's reply brief either entirely or in part.

- 2 ICNU contends PacifiCorp's reply brief exceeds the 10-page limit established in this proceeding by at least three pages and, for that reason, should be stricken. Although the body of PacifiCorp's reply brief actually is 10 pages long, ICNU alleges the company exceeded the established page length by at least 30% by changing the

spacing and by employing “word compression” of its brief.¹ ICNU contends these deviations from Microsoft Word’s default values violate the administrative rule that sets forth the Commission’s format requirements for briefs.² The Commission’s rule requires, *inter alia*, that briefs must be “double-spaced, 12-point palatino, times new roman, or an equally legible serif font”³

3 ICNU argues PacifiCorp’s Reply Brief is not double-spaced because the spacing between lines is actually 24 points instead of 28 points, which ICNU contends is closer to one and a half lines than two lines of spacing. PacifiCorp and Staff both point out that “double spacing” is reasonably taken to mean two times the font size regardless of what Microsoft’s software engineers have created as a default value in Microsoft Word. The Commission-prescribed font size is 12 points, so the line spacing must be at least 24 points. Contrary to ICNU’s argument, it appears PacifiCorp’s reply brief is double spaced, in compliance with the Commission’s rule.

4 ICNU also complains that PacifiCorp manipulated the font spacing to decrease the amount of pages in its reply brief. ICNU argues that instead of using the “normal” spacing between characters, PacifiCorp condensed the spacing by 0.5 points. Thus, ICNU contends, the company’s reply brief cannot be considered in Times New Roman or a similarly legible font. Both PacifiCorp and Staff point out that nothing in the Commission’s rule addresses the issue of character spacing. That is, the rule does not address whether it is impermissible to depart from the Microsoft Word-prescribed spacing of the characters on each line. Rather, the requirement set forth in the rule is stated in terms of legibility: the requirement is for a legible serif font. PacifiCorp’s brief uses the Times New Roman font and we find no violation of the legibility requirement.⁴

5 ICNU also complains that PacifiCorp’s brief would not be overlong if the company had not included what ICNU characterizes as “unprofessional and irrelevant comments.” ICNU offers as an example the suggestion in PacifiCorp’s reply brief that ICNU and Public Counsel’s “advocacy spins out of orbit (*i.e.* it has ‘slipped the surly bonds of earth’), and is worthy of no serious consideration.” While we observe

¹ The date and counsel’s signature block appear on page 11 of PacifiCorp’s reply brief.

² WAC § 480-07-395(1).

³ *Id.*

⁴ As PacifiCorp notes, if the letter compression is removed, its Reply Brief would have two lines of a carry-over sentence on page 11, plus the signature block.

that such rhetoric does little to promote a party's cause, it is certainly a commonplace practice among lawyers who draft briefs in contested cases. Indeed, we might point to ICNU's reference in its initial brief to PacifiCorp's "gold-plated medical plan" or its reference in its reply brief to model-generated power costs as "fake numbers" as constituting examples of similarly unhelpful word choice by another party in this proceeding.

6 Finally, ICNU complains about PacifiCorp's opening and reply briefs because, in ICNU's view: "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." As PacifiCorp points out, our rules do not include requirements concerning the amount or relative proportion of argument that must to be presented in text rather than in footnote. This is, as PacifiCorp states, a matter of advocacy style, not format. Excessive footnoting conceivably could diminish the impact of a party's arguments and this concern should be adequate to keep the practice of placing argument in footnotes within reasonable bounds.

7 We expect parties to conform to both the spirit and the letter of our format requirements for briefs. We express our concern that a party using practices such as PacifiCorp employed in this instance to maximize the content it could include in a 10-page brief could manipulate text to a point where it would be unacceptable. However, we do not find that to be the case here. PacifiCorp did not violate the letter of our format rule and violated its spirit in this instance only slightly.

8 Were the use of word compression to become commonplace or excessive in pleadings and arguments filed with the Commission, we have the means to forbid the practice through procedural orders in individual proceedings, or we can change our format rule. We do not expect this to occur, however, because surely all counsel who appear before us will be mindful of Washington State Supreme Court Commissioner Geoffrey Crooks's sage admonition that:

Page limitations are a necessary concession to the bounds of human concentration and the shortness of life. Seldom, if ever, is an over-length brief helpful either to the court or to the cause of the wordy party.

ORDER

9 ICNU's Motion to Strike PacifiCorp's Reply Brief is denied.

DATED at Olympia, Washington, and effective June 1, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge