STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

THE WASHINGTON STATE ATTORNEY GENERAL'S OFFICE, PUBLIC COUCIL SECTION, Petitioner, v. WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Respondent.	NO. 04-2-02511-4 PETITION FOR JUDICIAL REVIEW OF FINAL AGENCY ORDER

COMES NOW the petitioner, the Public Counsel Section of the Washington State Attorney General's Office ("Public Counsel"), by and through Assistant Attorney General, Robert W. Cromwell, Jr., and petitions pursuant to Chapter 34.05 RCW for judicial review of agency action by the respondent, the Washington Utilities and Transportation Commission ("Commission").

In support of this petition, the petitioner respectfully shows pursuant to RCW 34.05.546 as follows:

(1) **NAME AND MAILING ADDRESS OF PETITIONER:**
CHIRSTINE O. GREGOIRE, Attorney General
Simon J. ffitch AAG, Section Chief
Public Counsel Section
Washington State Office of the Attorney General
900 4th Avenue, Suite 2000
Seattle, WA 98164-1012

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
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(206) 464-7744

(2) **NAME AND MAILING ADDRESS OF PETITIONER'S ATTORNEYS:**

Robert W. Cromwell, Jr. AAG
Public Counsel Section
Washington State Attorney General's Office
900 4th Avenue, Suite 2000
Seattle, WA 98164-1012

(3) **NAME AND MAILING ADDRESS OF AGENCY WHOSE ACTION IS AT ISSUE:**

Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250

(4) **IDENTIFICATION OF THE AGENCY ACTION AT ISSUE:**

Issuance on October 27, 2004 of the "Order No. 6 Approving and Adopting Settlement Agreement Subject to Conditions; Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing" in Commission Docket No. UE-032065 which was affirmed in "Order No. 07 Granting Clarification, Denying Motion for Stay, and Denying Petitions for Reconsideration" issued on November 10, 2004. Service of Order No. 7 on Public Counsel was made on November 10, 2004 electronically. A copy of these orders is attached to this petition.

(5) **IDENTIFICATION OF PARTIES IN ADJUDICATED PROCEEDINGS THAT LEAD TO AGENCY ACTION:**

PacifiCorp d/b/a Pacific Power & Light Company

Washington Utilities and Transportation Commission Staff ("Staff")

The Public Counsel Section of the Washington State Attorney General's Office

The Industrial Customers of Northwest Utilities ("ICNU")

The Citizens' Utility Alliance of Washington ("CUA")

The Natural Resources Defense Council ("NRDC")

The Energy Project, Opportunity Council, Northwest Community Action Center, and Industrialization Center of Washington (collectively "Energy Project")

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(6) JURISDICTION AND VENUE:

(a) This is an action seeking judicial review of a final order of the Commission. This court has jurisdiction pursuant to Part V of the Washington Administrative Procedure Act, RCW 34.05.510 *et seq.*

(b) Venue is appropriate in Thurston County pursuant to RCW 34.05.514(1)(a).

(7) FACTS THAT DEMONSTRATE THAT THE PETITIONER IS ENTITLED TO OBTAIN JUDICIAL REVIEW:

(a) Petitioner Public Counsel is a section of the Washington State Attorney General's Office which represents the interests of the people of the state of Washington (in this case electricity customers of PacifiCorp) before the Commission. RCW 80.01.100 and 80.04.510. Public Counsel participated in the 2003 PacifiCorp general rate case from which this appeal is taken. Public Counsel also participated in the both PacifiCorp's 1999 general rate case (Docket No. UE-991832) and PacifiCorp's 2002 petition for deferred accounting (Docket No. UE-020417). The final order in the 2002 deferral case permitted PacifiCorp to file the 2003 general rate case from which this appeal is taken. That final order has been appealed and is currently under review in Division II of the Court of Appeals (Docket No. 31826-II).[1]

(b) Respondent Commission is an administrative agency of the state of Washington, established under RCW 80.01.010. Among the Commission's duties is the duty to regulate in the public interest, as provided by the public service laws, the rates, services, facilities and practices of all persons engaged within the state of Washington in the business of supplying any utility service or commodity to the public for compensation, including, but not limited to, electric power companies. RCW 80.01.040.

(c) PacifiCorp is a wholly owned subsidiary of United Kingdom-based Scottish Power, with its principal place of business in the United States in Portland, Oregon. PacifiCorp does business in Washington as Pacific Power & Light Company ("PP&L") and is an electric

[1] Public Counsel's Petition for Judicial Review of the 2003 order was brought to Thurston County Superior Court and heard by Judge Hicks, who denied the petition (Docket No. 03-2-01614-1).

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company subject to regulation by the Commission. PP&L provides service to approximately 120,000 customers in Washington including the residents of Yakima and Walla Walla.

(d) On December 16, 2003, PacifiCorp filed with the Commission a general rate case seeking an increase of $26.7 million in revenues, or a 13.5 percent increase. The Commission Suspended the Tariff Revisions on January 14, 2004 and set the matter for hearing. Commission Staff, intervenors, and Public Counsel filed response testimony and exhibits on July 2, 2004.[2] PacifiCorp filed rebuttal testimony on July 28, 2004. On August 24, 2004 PacifiCorp and Commission Staff filed a multi-party Settlement Agreement, which was later joined by NRDC, in a revised Settlement Agreement filed on August 27, 2004. The proposed settlement provided for a revenue requirement increase of $15,501,000. ICNU and Public Counsel opposed the settlement and urged its rejection. The Commission conducted hearings on September 9, 10, 16, and 17, 2004 and a public comment hearing in Yakima, Washington on September 27, 2004. PacifiCorp, Commission Staff, NRDC, ICNU, and Public Counsel filed briefs on October 8, 2004. On October 27, 2004 the Commission entered Order No. 6 approving the Settlement with conditions which lowered the rate increase to $15 million. After motions for clarification and reconsideration the Commission issued Order No. 7 on November 10, 2004 which raised the amount of the rate increase back up to the $15.5 million requested by the settling parties.

(e) This rate case was allowed pursuant to a Commission Order from 2003 which rescinded a previously agreed bar to a PacifiCorp rate case filing to increase rates in 2004 or 2005, and authorized the company to file a general rate case by year end 2003, two years

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[2] The Commission Staff commonly act as an independent party in adjudicative proceedings before the Commission.

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earlier than previously agreed.[3] Public Counsel has sought judicial review of the Commission's Sixth/Eighth Order which permitted this general rate case and that matter is now pending before Division II of the Court of Appeals in Docket No. 31826-II.

(f) PacifiCorp's Washington ratepayers are irreparably harmed by the Commission's Order for which judicial review is hereby sought. They must now pay rates which the Petitioner believes are unlawful and for which they are entitled to refund. A decision of the court reversing the Commission's order will substantially redress this harm.

(8) PETITIONER'S REASONS FOR BELIEVING THAT RELIEF SHOULD BE GRANTED:

Public Counsel and the Pacificorp ratepayers it represents are and will continue to be adversely affected by the Commission's Order.

These orders violate the procedural and substantive requirements of the Washington Administrative Procedure Act, RCW 34.05.570(3), in the following respects:

I. ARGUMENTS

A. The Commission Arbitrarily and Capriciously and Without Substantial Evidence To Support its Decision Failed To Reconcile its Final Order With its Prior Orders.

The Commission's order approving the settlement of this case was arbitrary and capricious for failing to reconcile the outcome with the rate plan it had previously approved and whose abrogation is currently the subject of appeal in Division II of the Court of Appeals (Docket No. 31826-II). The failure of the Commission to clearly articulate facts constituting substantial evidence in support of its decision renders the abrogation of the settlement agreement a violation of RCW 34.05.570(3)(e).

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[3] *Re PacifiCorp*, "Sixth Supplemental Order; Denying Petition for Accounting Order; Rejecting Tariff Filing; Authorizing Subsequent Filing" in Commission Docket No. UE-020417 which is also identified as the "Eighth Supplemental Order; Amending Third Supplemental Order" in Commission Docket No. UE-991832 (July 15, 2003) ("Sixth/Eighth Order") which broke the five year rate plan previously agreed to and ordered by the Commission in *WUTC v. PacifiCorp,* Third Supplemental Order, Docket No. UE-991832 (August 9, 2000) ("2000 Settlement Order").

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B. The Commission's Order Arbitrarily and Capriciously Failed to Resolve The Very Issues it Relied Upon in Allowing This Proceeding To Occur.

Order No. 6 failed to resolve questions of fact (interstate cost allocation, prudence, and financial accountability) upon which the Commission previously relied upon as the basis for abrogating the 2000 Settlement and allowing this rate case; and the final order from which the Petitioner appeals.

C. The Commission Arbitrarily and Capriciously and Without Substantial Evidence To Support its Decision Allowed Recovery in Rates of Resources it Has Not Deemed Prudent.

The Commission arbitrarily and capriciously allowed recovery in rates of resources located in PacifiCorp's Eastern Control Area for which no prudency determination has been made, was arbitrary and capricious and constituted an erroneous interpretation of law. Further, the Commission failed to identify and articulate substantial evidence supporting its decision to allow recovery in rates of resources it determined were prudently acquired and are used and useful.

D. The Commission's Findings That the Rates Proposed Were Fair, Just, and Reasonable Was Not Supported By Substantial Evidence.

The Commission's findings that the rates proposed by the settling parties which it then approved were not supported by substantial evidence and should be vacated.

E. The Commission's Findings That it Could Rely Upon Original Protocol For Purposes of Determining Rates and Simultaneously Rely on Revised Protocol on a Forward-going Basis Was Arbitrary and Capricious and Not Supported By Substantial Evidence.

The Commission arbitrarily and capriciously approved and adopted a settlement which relied upon the interstate cost allocation "original protocol" for determining rates but also relies upon an untested "revised protocol" for reporting purposes on a going-forward basis without substantial evidence supporting its decision.

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F. The Commission Arbitrarily and Capriciously Failed to Resolve All Questions of Fact.

Public Counsel presented testimony and evidence regarding a range of issues which the Commission arbitrarily and capriciously failed to address in its final order.

(9) PETITIONER'S REQUEST FOR RELIEF:

Having stated the basis for its petition for review, Public Counsel respectfully requests relief as follows:

1. For an entry of judgment pursuant to RCW 34.05.570 and RCW 34.05.574 vacating Order No. 6 and Order No. 7;

2. For a finding that the current rates are unlawful;

3. For a finding that ratepayers are entitled to refund; and

4. For such other relief as the Court deems just and appropriate.

RESPECTFULLY SUBMITTED this 9th day of December, 2004.

CHRISTINE O. GREGOIRE
ATTORNEY GENERAL

By: _____
ROBERT W. CROMWELL, JR.
WSBA #24142
Assistant Attorney General

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PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

☒ US Mail Postage Prepaid via Consolidated Mail Service

☒ ABC/Legal Messenger (Shannon Smith, WUTC Staff and WUTC, Record Center)

☐ State Campus Delivery

☒ Copies to James M. Van Nostrand, Stoel Rives LLP, 900 SW 5th Avenue Suite 2600, Portland, Oregon 97204; Melinda Davison, Davison Van Cleve P C, 1000 SW Broadway Suite 2400, Portland, Oregon 97205; Ralph Cavanagh, Northwest Project Director, NRDC, 71 Stevenson Street Suite 1825, San Francisco, California 94105; Shannon Smith, WUTC Staff, 1400 S Evergreen Park Drive SW, P.O. Box 40128, Olympia, Washington 98504-0128; John O'Rourke, Program Director, CUAW, 212 W 2nd Avenue Suite 100, Spokane, Washington 99201; Chuck Eberdt, The Energy Project, The Opportunity Council, 1701 Ellis Street, Bellingham, Washington 98225; and Washington Utilities and Transportation Commission, Record Center, 1300 S. Evergreen Park Drive SW, P.O. Box 47250, Olympia, Washington 98504-47250.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 9th day of December, 2004, at Seattle, WA.

Carol Williams
Legal Assistant

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[Service Date October 27, 2004]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET NO. UE-032065
Complainant,	)	ORDER NO. 06
v.	)	APPROVING AND ADOPTING SETTLEMENT AGREEMENT SUBJECT TO CONDITIONS; REJECTING TARIFF SHEETS; AUTHORIZING AND REQUIRING COMPLIANCE FILING
PACIFICORP d/b/a PACIFIC POWER & LIGHT COMPANY	)	
Respondent.	)	

Synopsis: The Commission approves and adopts a multi-party Settlement Agreement, subject to conditions, as a reasonable resolution of PacifiCorp's request for a general increase in electric rates. The resulting increase in rates will allow PacifiCorp to recover an additional $15,057,000 in revenue, representing an increase in rates of approximately 7.5 percent.

SUMMARY

1 **PROCEEDINGS:** On December 16, 2003, PacifiCorp d/b/a Pacific Power & Light Company ("PacifiCorp" or the "Company") filed with the Commission revisions to its currently effective Tariff WN U-74, designated as set forth in paragraph 1 of the Commission's Complaint and Order No. 01 in this proceeding. The tariff sheets included a stated effective date of January 16, 2004. PacifiCorp requested an increase in annual revenues from Washington operations of $26.7 million, resulting in a proposed uniform increase in rates of 13.5 percent. The filing was based on a test period consisting of the twelve months ending March 31, 2003. The Commission entered its Complaint and Order Suspending Tariff Revisions on January 14, 2004. PacifiCorp and the Commission's regulatory staff

("Commission Staff" or "Staff")[1] filed a multi-party settlement Agreement on August 24, 2004.[2] Public Counsel and the Industrial Customers of Northwest Utilities opposed the settlement. The Commission conducted evidentiary hearings before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner Patrick J. Oshie, and Administrative Law Judge Dennis J. Moss on September 9, 10, 16, and 17, 2004. The Commission conducted a public comment hearing on September 27, 2004, in Yakima, Washington. The parties filed briefs on October 8, 2004.

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 DECISION:** The Commission determines that its approval and adoption of the proposed settlement agreement, with conditions, provides a

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[1] In formal proceedings, such as this case, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding ALJ, and the Commissioners' policy and accounting advisors from all parties, including Staff. *RCW 34.05.455.*

[2] The Natural Resources Defense Council joined the settlement and a revised version was filed on August 27, 2004.

reasonable resolution of the issues pending in this proceeding and is in the public interest. The end result will be rates for prospective application that are fair, just, reasonable, and sufficient.

MEMORANDUM

I. Background and Procedural History

4 PacifiCorp provides retail electric service in six states: Utah, Oregon, Idaho, Wyoming, California, and Washington. The Company's retail customers in Washington account for approximately 8 percent of the company's total customers and 8.5 percent of the total Company load. Utah and Oregon are PacifiCorp's largest and second largest operations, respectively, followed by Wyoming. PacifiCorp's' Idaho and California operations each are somewhat smaller than the Company's operations in Washington.

5 On December 16, 2003, PacifiCorp filed with the Commission revisions to its currently effective Tariff WN U-74, designated as set forth in paragraph 1 of the Commission's Complaint and Order No. 01 in this proceeding. The stated effective date was January 16, 2004. PacifiCorp requested an increase in annual revenues from Washington operations of $26.7 million, resulting in a proposed uniform increase in rates of 13.5 percent. The filing was based on a test period consisting of the twelve months ending March 31, 2003. The Commission entered its Complaint and Order Suspending Tariff Revisions on January 14, 2004. The Commission conducted a prehearing conference on January 26, 2004, and, among other things, established a procedural schedule.

6 Staff, intervenors, and Public Counsel filed response testimony and exhibits on July 2, 2004. Staff proposed a revenue requirement increase of $7.1 million. ICNU's testimony proposed adjustments to reduce PacifiCorp's requested increase in Washington revenues by approximately $10.8 million. Public

Counsel proposed to decrease the Company's Washington revenues by approximately $25 million.

7 PacifiCorp filed rebuttal testimony on July 28, 2004. In its rebuttal testimony, PacifiCorp revised its requested revenue requirement increase to $25.7 million.

8 On August 24, 2004, less than one week prior to commencement of scheduled evidentiary hearings, PacifiCorp and Staff filed a multi-party Settlement Agreement, which these parties proposed be adopted by the Commission as a full resolution of the issues pending in this proceeding. NRDC, following further discussion and an amendment to the original settlement stipulation, joined in a revised Settlement Agreement filed on August 27, 2004. The proposed settlement provides for a revenue requirement increase of $15,501,000.

9 ICNU and Public Counsel oppose the settlement and urge its rejection. Energy Project and the Alliance take no formal position on the proposed settlement.

10 The Commission conducted hearings before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner Patrick J. Oshie, and Administrative Law Judge Dennis J. Moss on September 9, 10, 16, and 17, 2004. Commissioner Oshie and ALJ Moss conducted a public comment hearing in Yakima, Washington on September 27, 2004. The record in this proceeding, formally closed on September 30, 2004, includes testimony by 37 witnesses, more than 400 exhibits, and 7 transcript volumes including 840 pages of text. PacifiCorp, Staff, NRDC, ICNU, and Public Counsel filed briefs on October 8, 2004.

II. Discussion

A. Introduction

11 We have before us a multi-party settlement. PacifiCorp and Staff, the only parties that presented fully developed revenue-requirement cases, were able to achieve compromises on a host of issues. They have agreed to an end result in terms of revenue requirement and rates that both parties regard as fair, just, reasonable, and sufficient. NRDC joins in supporting the proposed settlement in consideration of the addition of a provision resolving its interests.

12 ICNU and Public Counsel oppose the proposed settlement. They argue that PacifiCorp should not receive approval for any increase in rates at this time. Public Counsel focuses its objection on the proposition that "the current proceeding, including the proposed settlement, should be rejected by the Commission as inconsistent with the Rate Plan."[3] Public Counsel, however, also contends that certain specific methodologies and adjustments that are underlying elements in the proposed Settlement Agreement are contrary to the public interest or not supported by the evidence. ICNU contends that the proposed settlement does not satisfy the requirements of the Commission's order that authorized PacifiCorp to file the tariff revisions that initiated this rate proceeding. ICNU also argues that the proposed settlement does not account for various adjustments advocated by the non-settling parties.

13 These respective positions should be understood in their historical context. For the genesis, we look back 17 years to the August 12, 1987, merger agreement between Pacific Power and Light with Utah Power and Light. The Commission considered and approved that merger, with conditions, by order entered in

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[3] Public Counsel Brief at 3, ¶4. The Rate Plan to which Public Counsel refers resulted from the Commission's approval and adoption of a settlement agreement in Docket No. UE-991832. The Commission subsequently modified its order approving the settlement, expressly authorizing PacifiCorp to file the rate case before us today. We discuss this point in more detail below.

Docket No. U-87-1338-AT, on July 15, 1988.[4] Among other things, the Commission required the Company to file revised tariff sheets that would reflect allocation to Washington rates of an equitable share of the financial benefits that were projected to occur during the early years following the merger.

14 Inter-jurisdictional allocation of costs among the six states PacifiCorp serves has proved to be a continuing source of controversy for many years. It has been an issue in various proceedings in Washington, including PacifiCorp's two most recent contested dockets involving requests by the Company for adjustments to rates.

15 In PacifiCorp's most recent general rate filing preceding this docket, the Company proposed that costs be allocated to Washington rates according to a methodology to which Commission Staff, and other parties, strenuously objected. The proceeding, Docket No. UE-991832, was resolved on the basis of the Commission's approval and adoption of a full settlement among all parties that implicitly reserved for another day any definitive resolution of the complex issues involved in inter-jurisdictional cost allocation.[5]

16 We have come to refer to the Stipulation that the Commission approved and adopted in Docket No. UE-991832 as the "Rate Plan." In part relevant to our background discussion here, the Stipulation states:

> **1. Rate Plan Period**
>
> **a. Term.** The rate plan period established in this Stipulation ("Rate Plan Period") commences as of the date of the Commission order approving this Stipulation and continues through December 31, 2005. During the Rate Plan Period, the Parties will neither propose,

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[4] *Exh. No. 511.*

[5] *WUTC v. PacifiCorp,* Third Supplemental Order, Docket No. UE-991832 (August 9, 2000).

nor will they recommend that the Commission approve, any change in the Company's general base rates in Washington.

b. Purpose. The Parties agree that the rate plan offered in this Stipulation is in the public interest and will provide rates for the Company that are just, fair, reasonable and sufficient throughout the Rate Plan Period. The rate plan is designed to achieve several objectives for the Company and its customers over the Rate Plan Period. First, the staging of rate increases over a three-year period lessens the impact on customers of the increases that the Parties have agreed are necessary. The rate plan, after taking into account the other credits that will be flowed through to customers, provides for relative rate stability for a period in excess of five years.

Second, the rate plan covers a period of significant transition for the Company. The rate plan recognizes the difficulty of setting rates during this transitional period, and provides the Company with an opportunity to earn reasonable returns, on balance, over the Rate Plan Period. At the same time, customers are provided predictable and relatively stable rates for the Rate Plan Period.

Third, the rate plan provides that at the end of the Rate Plan Period, the Company will submit either a filing demonstrating the reasonableness of the Company's then-existing rates or a general rate filing. This filing will enable the Commission and the Parties to examine the Company's performance over the Rate Plan Period, and to evaluate the reasonableness of the Company's rates in light of the conditions that exist following the Rate Plan Period.

17 On April 5, 2002, PacifiCorp filed in Docket No. UE-020417 a petition for an order authorizing deferral of "excess" net power costs assertedly incurred by the Company to serve Washington customers though the period of the Western energy crisis that occurred during 2000-2001. PacifiCorp's petition referred to the fact that it was then subject to the Rate Plan and that the Rate Plan limited the availability of general rate increases through 2005. Based on a fully developed record, the Company proposed several alternative forms of relief, including a

recommendation that the Commission could deny the deferral request, and determine that the Company's sole means of obtaining rate relief would be through a general rate proceeding that the Commission would authorize PacifiCorp to file by the end of 2003.

18 The Commission, in its final order in Docket No. UE-020417,[6] said:

> On balance, considering all the evidence, we determine that PacifiCorp has not borne its burden to demonstrate entitlement to deferral accounting or immediate rate relief.
>
> We do, however, conclude that the record, considered as a whole, demonstrates that the Rate Plan has been so overtaken by events that it no longer is in the public interest for the Company's rates to remain unexamined through the Rate Plan Period. We emphasize that the record in this proceeding is not an adequate one upon which to conclude that PacifiCorp's current rates are not fair, just, reasonable, and sufficient. The record here, however, is adequate to bring into question whether that standard will be satisfied when considered in light of a current test year with properly restated, normalized, and pro formed results. PacifiCorp's Washington operations have not been thoroughly reviewed on a full general rate case record in 17 years. Such an examination is long overdue and seems absolutely imperative in the wake of the recent power market crisis. It would be contrary to the public interest for us to bar this important matter from full consideration at an early date. Accordingly, we conclude that we should amend our Third Supplemental Order in Docket No. UE-991832 to the extent necessary to authorize PacifiCorp to file a general rate case prior to the end of this year as the Company has committed to do, if permitted.

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[6] *Re PacifiCorp*, Docket Nos. UE-991832 and UE-020417, Sixth/Eighth Suppl. Order, pp. 10-11, ¶¶22-23 (July 15, 2003).

We noted in this connection that a so-called multi-state process was underway and expected to be finalized in the near term. We noted further that the outcome of that process, which was aimed at achieving a comprehensive resolution of the long-pending disputes over inter-jurisdictional cost allocation, "should inform PacifiCorp's filing with respect to the important question of inter-jurisdictional cost allocation issues."[7]

19 In the last "Discussion and Decision" paragraph in our final order in Docket No. UE-020417,[8] we reiterated the Commission's concern, as expressed in the final order in Docket No. UE-991832, that PacifiCorp had not been closely scrutinized in a general rate proceeding for nearly two decades. The balance of the referenced paragraph states:

> Such an examination is long overdue. Without such an examination, we can only approximate, even guess at, the important baselines against which claims of excessive power costs and their impact on the Company's operations must be measured if we are to reach meaningful results. We place no particular fault on PacifiCorp for this state of affairs, yet it is the state of affairs we, and the Company, face. The appropriate solution, we conclude, is to authorize PacifiCorp to file a general rate case.

That case is before us now.

B. The Settlement Agreement

20 The proposed Settlement Agreement is attached as Appendix A to this Order. By way of brief summary, we excerpt from some parts of the Agreement here to set the stage for our discussion in section III.C., below.

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[7] *Id., fn. 10.*
[8] *Id., p. 19, ¶43.*

21 The settling parties, having presented fundamentally different inter-jurisdictional cost-allocation methodologies through their respective testimonies, agree that the "Protocol" method PacifiCorp used in its filing and advocated for adoption for purposes of this case "represents the only common basis for evaluating the Company's case [and] upon which the Parties could evaluate each other's proposed adjustments."[9] Accordingly, they agree "that PacifiCorp's revenue requirement in this proceeding will be calculated on the basis of the Protocol."[10] The Settlement Agreement emphasizes that Protocol is used "for purpose of this proceeding only."[11]

22 The settling parties also agree to initiate discussions immediately following this proceeding to "discuss development of a mutually acceptable cost allocation proposal applicable to Washington."[12] Pending the conclusion of those discussions, and without agreeing that any particular allocation methodology is "sufficient or proper for use in any future proceedings before the Commission," the settling parties agree that "the Company will use the Revised Protocol as the basis for its routine regulatory filings with the Commission."[13]

23 As to revenue requirement, the Settlement Agreement provides in ¶9 that:

> The Parties agree that PacifiCorp will reduce its revenue requirement request to reflect the adjustments listed on Attachment

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[9] *Exh. No. 3, Settlement Agreement at p. 3, ¶8.a.* This Protocol, sometimes referred to as the "Original Protocol," is the allocation methodology PacifiCorp was advocating for adoption in multiple jurisdictions at the time the Company filed its revised tariff sheets in this proceeding. Further negotiations in Utah and Oregon during the pendency of this proceeding led to a materially different "Revised Protocol" that, by the close of the record here, was pending for approval in several of the states in which PacifiCorp provides service. The "Revised Protocol" was presented in PacifiCorp's rebuttal case as a preferred methodology, but remains largely unexamined by other parties in the context of this proceeding.

[10] *Id. at ¶ 8.b.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

A to this Settlement Agreement. PacifiCorp's rebuttal testimony supported a revenue requirement increase of $25.7 million. The adjustments listed on Attachment A reduce this amount by approximately $10.2 million, resulting in a recommended revenue requirement increase of $15.5 million.

24 The Settlement Agreement discusses in ¶10 individual revenue-requirement issues. This paragraph states that while the settling parties were not able to agree to each of the components of cost of capital, they did agree to an overall cost-of-capital adjustment of $3.5 million. The Settlement Agreement states that this produces an overall rate of return of 8.39% when considered along with the other adjustments included in the Settlement Agreement.[14] Thus, the Settlement Agreement would establish a benchmark against which the Company's future performance can be measured.

25 Turning to net power costs in ¶10.b. the Settlement Agreement provides: "The Parties agree that the Company's filed net power costs should be reduced from $555 million on a Total Company basis (as stated in the Company's rebuttal case) to $534.1 million."[15] Individual adjustments are shown on Attachment B to the Settlement Agreement. Washington's share of the reduction in power costs, allocated on the Protocol basis, is approximately $1.93 million, as shown on Attachment A to the Settlement Agreement.

26 In ¶ 10.c., the Settlement Agreement provides that the prudence of resources acquired since 1986 located in the Company's Eastern Control Area "will be examined in a subsequent proceeding if and when it is determined that the inter-jurisdictional cost allocation methodology requires their prudence to be evaluated for purposes of setting Washington rates." Staff agrees that Hermiston and James River generation—resources acquired since 1986 located in the Company's Western Control Area—were prudently acquired to serve

[14] *Id. at ¶ 10.a.*
[15] *Id. at ¶ 10.b.*

Washington customers and are properly included in rate base in this, and future proceedings.

27 In ¶11 of the Settlement Agreement, the settling parties agree to adopt the rate spread and rate design recommendations set forth in the joint testimony of Public Counsel witness Jim Lazar, ICNU witness Don Schoenbeck, and Staff witness Joelle Steward.[16]

28 Regulatory assets and deferred debits are discussed in ¶¶ 12 and 13 of the Settlement Agreement. In ¶ 12.a. the settling parties agree and ask the Commission to confirm that PacifiCorp's "actuarially determined FAS 87 pension expense is a recoverable cost." Staff, for its part, agrees to expedite the processing of the Company's pending request for an accounting order concerning the treatment of this expense.

29 The Settlement Agreement states in ¶ 12.b. that:

> Trail Mountain. The Parties recommend that the Commission issue an accounting order authorizing the Company to accumulate the $46.3 million reflecting the Company's unrecovered investment in Trail Mountain Mine and related mine closure costs and to record such investment in Account 182.3. The Parties request that the Commission approve deferral of these costs as of April 1, 2001. In addition, the Parties ask that the Commission authorize five years as a reasonable period over which to amortize the costs associated with the Trail Mountain Mine closure, with amortization commencing with the establishment of the deferral, April 1, 2001, and ending March 2006.

30 In ¶ 12.c., the settling parties "recommend that the Commission issue an accounting order authorizing the Company to record and defer costs prudently

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[16] *Exh. No. 621.*

incurred in connection with its environmental remediation program, on an ongoing basis." The paragraph describes the categories of costs the parties would have the Commission authorize for the proposed accounting treatment. The settling parties ask for a finding that "ten years is a reasonable period over which to amortize these environmental remediation costs."

31 In ¶ 12.d. the Settlement Agreement states: "Except as specifically set forth in the adjustments, all remaining regulatory assets and liabilities are recognized in rates for purposes of this settlement."

32 The Settlement Agreement, as revised to meet NRDC's interest in this proceeding, includes a provision in ¶ 13 entitled "Removing Disincentives to Demand-Side Initiatives," which states:

> The Parties recommend that the Commission's Order in this proceeding address the issue of whether it is in the public interest to investigate a true-up mechanism designed to eliminate financial disincentives associated with the Company's demand-side initiatives, based on a review of NRDC's testimony and other information in the record. Upon such a finding, the Company will initiate discussions with Staff and interested parties to review the effects of demand-side investments on the recovery of fixed costs and other potential disincentives to such investments by the Company, and to address the potential structure of a true-up mechanism that would make recovery of these costs independent of retail electricity sales. After such discussions, the Company may propose a true-up mechanism for consideration by the Commission at the earliest practicable time.

33 The final section of the Settlement Agreement, ¶ 14, includes several sub-paragraphs stating "General Provisions." Among other things, this section provides that if the Commission accepts the Settlement Agreement with conditions not stated in the Agreement, or approves a revenue requirement

different from what the settling parties propose, then any party may elect to state in writing "its rejection of the conditions." The effect, it appears, would be to return the proceeding to its status at the time the settlement was offered, in accordance with the provisions of WAC 480-07-750. However, if the Commission approves a revenue requirement different from what the settling parties propose—what the Settlement Agreement calls a "Revised Rate Increase"— and the Company waives the current suspension period deadline (*i.e.,* November 16, 2004) to accommodate the necessity for further proceedings, the settling parties recommend that PacifiCorp be authorized to implement that Revised Rate Increase at the end of the current suspension period, subject to refund, pending issuance of a final order in this proceeding.

C. Analysis and Decision.

1. Threshold Arguments.

34 A central part of the Commission's statutory responsibility is to "regulate in the public interest, as provided by the public service laws, the rates, services, facilities and practices" of investor-owned electric companies, including PacifiCorp.[17] The public service laws require that electric rates set by the Commission be "just, fair, reasonable, and sufficient."[18] Thus, the Washington Supreme Court has said:

> [T]he WUTC must in each rate case endeavor not only to assure fair process and service to customers, but also to assure that regulated utilities earn enough to remain in business—each of which functions is as important in the eyes of the law as the other.[19]

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[17] *RCW 80.01.040(3).*

[18] *RCW 80.28.010.*

[19] *People's Organization for Washington Energy Resources (POWER) v. Utilities & Transp. Comm'n,* 104 Wn.2d 798, 808, 711 P.2d 319 (1985) (*citing State ex rel. Puget Sound Power & Light Co. v. Department of Pub. Works,* 179 Wash. 461, 466, 38 P.2d 350 (1934)).

We maintain this balance of interests in many instances through the conduct of quasi-judicial proceedings initiated by our suspension of filings in which companies propose to increase rates by tariff revisions or take other actions that may affect rates.[20] As discussed above in greater detail, during recent years we have had two such proceedings concerning PacifiCorp's rates that led to the current proceeding.

35 To summarize briefly, in Docket No. UE-991832 we had a general rate filing by PacifiCorp. Before litigation concluded in that case, the parties submitted a full settlement for the Commission's consideration. The Commission approved and adopted two unopposed stipulations that together established rates that were adjudged at the time, on the basis of the evidence then available, to be just, reasonable, and compensatory for a five-year Rate Plan Period. The Commission stated in its Order approving the settlement that "[t]he stipulations strike an appropriate balance among the interests of the ratepayers, the Company, and the public generally, and are in the public interest."[21]

36 In Docket No. UE-020417, however, the Commission found that the Rate Plan had been overtaken by events, including the Western energy crisis of 2000 –2001. The Commission found that the requirement of our order in Docket No. UE-991832 limiting the Company's ability to file a general rate case before July 1, 2005, had become contrary to the public interest because it would not permit adequate oversight by the Commission to ensure that PacifiCorp's rates would

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[20] "The public interest is served when the interests of the utility and the interests of the utility's customers are kept in careful balance." *In re the Matter of Avista Corp., d/b/a Avista Utilities Request Regarding the Recovery of Power Costs Through the Deferral Mechanism*, Docket No. UE-010395, Sixth Supp. Order Rejecting Tariff Filing; Granting Temporary Rate Relief, Subject to Refund; and Authorizing and Requiring Compliance Filing, ¶ 7 (Sept. 24, 2001). The public interest standard, of course, encompasses a broader set of interests. *See, e.g., Application of Puget Sound Energy Re Colstrip*, Third Supp. Order Approving Sale, Docket No. UE-990267 (September 30, 1999).

[21] *WUTC v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket No. UE-991832, Third Supp. Order Approving and Adopting Settlement Agreements; Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing, ¶ 3 (Aug. 9, 2000).

remain fair, just, reasonable, and sufficient through the end of the Rate Plan Period. The Commission amended the Third Supplemental Order in Docket No. UE-991832 to provide that PacifiCorp would be authorized to file a general rate proceeding prior to December 31, 2003, instead of July 1, 2005, as otherwise required under paragraph 3 of the Rate Plan.[22]

37 As expressly authorized by the Commission's Final Order in Docket No. UE-020417, PacifiCorp made a general rate filing in this proceeding on December 16, 2003. Despite this, Public Counsel and ICNU persist in arguing that this proceeding, and the Settlement Agreement now before us as a proposed resolution of the issues in this proceeding, should be rejected because it is "inconsistent with the Rate Plan."[23] This argument is obviously misplaced and we reject it.[24]

38 Public Counsel and ICNU also argue that the proposed Settlement Agreement should be rejected because, as ICNU puts it, "it does not resolve the issues the Commission sought to address when it amended the Rate Plan to allow the Company to file a general rate case."[25] ICNU argues that the Settlement does not provide a comprehensive analysis and determination of PacifiCorp's costs.[26] This ignores, however, the context in which the settlement was proposed. As described earlier, we have a very substantial record in this proceeding. The settling parties filed the proposed Settlement Agreement just days before

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[22] The Commission's authority to amend its orders is grounded in RCW 80.04.210.
[23] *Public Counsel Brief at 3, ¶4; ICNU Brief at 1, ¶1.*
[24] Indeed, Public Counsel and ICNU well understand the argument is misplaced here, as they are pursuing it in its proper place. Public Counsel filed a petition for judicial review challenging the Commission's authority to permit PacifiCorp to file a rate case before the end of the Rate Plan period. ICNU joined Public Counsel on brief. The petition was denied by the Thurston County Superior Court on May 27, 2004. *Office of the Attorney General, Public Counsel v. WUTC,* Thurston County Superior Court No. 03-2-01614-1. Public Counsel and ICNU have appealed that decision to Division II of the Court of Appeals (No. 31826-1-II). The appeal is pending argument.
[25] *ICNU Brief at 5, ¶10; See Public Counsel Brief at 5, ¶8.*
[26] *ICNU Brief at 12.*

evidentiary hearings were scheduled to begin. All parties had by then examined PacifiCorp's case and had developed and presented their own responsive cases. After the Settlement Agreement was filed, the Commission conducted further proceedings, including four days of evidentiary hearings during which the opportunity for supplemental direct testimony and for cross-examination was afforded to all parties.

39 Although Public Counsel and ICNU elected not to undertake a comprehensive review of the Company's rate filing, and elected to focus on a few specific issues, Staff did perform "an exhaustive review of PacifiCorp's filed evidence, accounts, books, and records [and] was able to reach a settlement with the Company to produce fair, just, reasonable, and sufficient rates."[27] Staff is the only party other than PacifiCorp that filed a full revenue requirements case. Significantly, Staff's continuing analyses of its response case prior to entering into settlement negotiations had led Staff to consider filing supplemental testimony recommending a revenue requirement in the range of $14 million.[28] The Settlement Agreement sets forth a stipulated results of operations, the bottom line of which is a revenue deficiency of $15.5 million. In short, this compromise between the positions taken by Staff and the Company is a close approximation of what Staff's independent review produced in the final analysis using Staff's as-filed allocation methodology and revised adjustments.

40 Thus, we reject ICNU's contention that the Settlement Agreement filed in this proceeding does not reflect a comprehensive analysis and determination of PacifiCorp's rates. Staff undertook such a review and the significant results are before us in the record.

41 ICNU also argues that no rate increase should be authorized in this proceeding because PacifiCorp's earnings, at present, are consistent with what the Company

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[27] *Staff Brief at 1, ¶1.*
[28] *Staff Brief at 18, ¶42.*

could have expected under the Rate Plan. Based on the predicate that "[u]nder the Rate Plan, PacifiCorp agreed that it would not receive additional revenues unless it was experiencing conditions sufficient to warrant interim rate relief," ICNU argues that the Company's "earnings do not show that PacifiCorp is suffering a financial emergency or other conditions that would warrant further amendment of the Rate Plan to allow PacifiCorp to increase rates."[29] However, as PacifiCorp argues, there is nothing in the Commission's order that authorized PacifiCorp to make this general rate case filing that precludes rate relief if the standard for interim rate relief is not met, or that ties what may be found in this case to be a reasonable return to anyone's expectations under the Rate Plan.

42 What the Commission authorized by its Final Order in Docket No. UE-020417 was a general rate filing by PacifiCorp—nothing more, and nothing less. Thus, we reject ICNU's argument that PacifiCorp's filing should be evaluated under some higher standard than is applied in other general rate proceedings.

43 Staff succinctly describes in its Brief the fundamental elements that must be considered in evaluating rates in the context of a general rate filing:

> The Commission evaluates whether a proposed rate increase is fair, just, reasonable, and sufficient by: (1) determining the utility's Washington intrastate adjusted results of operations during the test year; (2) establishing the fair value of the utility's property used and useful to providing service in the state of Washington (rate base); (3) determining the proper rate of return for the utility on that property; and (4) ascertaining the appropriate spread of rates charged various customers to recover that return.[30]

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[29] *ICNU Brief at 12, ¶20.*

[30] *Staff Brief at 3, ¶7* (citing *WUTC v. Avista Corp.*, Docket Nos. UE-991606 & UG-991607, Third. Supp. Order, ¶ 14 (Sept. 29, 2000)).

This describes the essential tasks before us. In the case of PacifiCorp, a multi-jurisdictional utility, resolution of the first two tasks requires consideration of inter-jurisdictional cost allocation.

2. Inter-jurisdictional Cost Allocation.

44 Public Counsel describes inter-jurisdictional cost allocation as "the most significant issue in this rate case."[31] Public Counsel argues that the "settlement's most singular failure is its failure to resolve this critical issue."[32] Public Counsel objects both to the settling parties' proposal that we rely on Protocol for the purpose of evaluating the revenue requirement as a key component of the settlement and to the proposed use of Revised Protocol for reporting purposes going forward. Public Counsel argues that PacifiCorp has abandoned Protocol for all purposes other than reaching a settlement here and that Revised Protocol has not been critically examined in this jurisdiction.[33]

45 ICNU makes arguments that are similar to those of Public Counsel with respect to the settling parties' use of Protocol. ICNU contends that greater costs are allocated to Washington under Protocol than under any other method that might arguably have been considered. However, as PacifiCorp argues, ICNU witness Mr. Falkenberg's conclusions were based upon a 14-year present-value analysis. Mr. Falkenberg's supporting exhibits show that in the nearer term, the original Protocol is *beneficial* to Washington consumers, compared to either the Rolled-in or Modified Accord method. According to PacifiCorp, during 2005, 2006, and 2007, under the original Protocol, the average annual Washington revenue

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[31] *Public Counsel Brief at 6, ¶9* (citing Exh. No. 450 (Docket Nos. UE-991832 and UE-020417, Sixth/Eighth Suppl. Order) at ¶¶ 30-31).
[32] *Public Counsel Brief at 6, ¶ 9.*
[33] *Id. at 7-8, ¶¶ 12,13.*

requirement is reduced by approximately $4.6 million compared to the Rolled-in method and approximately $2.5 million compared to Modified Accord method.[34]

46 ICNU also argues for the adoption of Revised Protocol (albeit with yet additional revisions) as the basis for resolving this proceeding and suggests that the $15.5 million revenue requirement recommended under the Settlement Agreement should be reduced by some amount to reflect the asserted lower revenue requirement that the Revised Protocol would produce.[35] Mr. Braden, however, testified that such an approach would not be appropriate:

> Q. [W]ouldn't it be inequitable to accept the settlement based on original protocol, but say that we're going to use revised protocol on a going forward basis and not give the customers the benefit of the reduction in rates, whatever that may be, associated with revised protocol?
>
> A. I can't characterize the situation the same way in order to give you a simple yes or no answer, because we don't feel that the settlement position of the Staff and our basis for entering into the stipulation is truly based on adoption of the original protocol. It's based on our evaluation of the overall case, looking at our own evaluation methodologies and then striking a compromise.
>
> So I feel that the compromise in and of itself is fair, regardless of which allocation methodology you might use to add up or combine the numbers in different ways to reach that result. So it's really the bottom line revenue

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[34] *PacifiCorp Brief at 15-16, ¶32* (citing Exh. No. 406C at 34).

[35] *ICNU Brief at 21, ¶¶36, 37.* We do not address in detail ICNU's argument that we should adopt Revised Protocol with ICNU's proposed further revisions because such a step is not supported by a fully developed record. Staff, for example, has not undertaken a thorough review of Revised Protocol. These are matters for the process that is to follow immediately on the heels of this proceeding, as provided by the Settlement Agreement, and discussed in this Order.

> requirement that's encapsulated in the stipulation that we support as fair, just, reasonable and sufficient.[36]

Mr. Braden also stated that any revenue requirement reduction associated with the Revised Protocol "has already been factored into the proposal that the parties have stipulated to."[37]

47 Thus, although the settling parties nominally rely on Protocol in the Settlement Agreement this does not mean that more costs are being allocated to Washington rates under the settlement than would be the case if the settling parties had identified some other allocation methodology for purpose of settlement. While it is true that Revised Protocol would allocate approximately $2.5 million less to Washington rates under PacifiCorp's analysis of that method vis-à-vis original Protocol,[38] the salient fact is that the Settlement Agreement results in $10 million less cost being allocated to Washington rates than under PacifiCorp's as-filed case that is based on original Protocol.

48 There is nothing in the Commission's Final Order in Docket No. UE-020417 that requires resolution of inter-jurisdictional cost allocation in this proceeding on a permanent or on any other basis. That is, as PacifiCorp argues, there is no "language in the order that required inter-jurisdictional cost allocation issue to be resolved in this proceeding as a condition precedent to this filing going forward."[39] However, we are encouraged by the significant progress our record shows that PacifiCorp has made on this issue in other jurisdictions and are optimistic the matter can soon be resolved on a durable basis in Washington. In this regard, Staff states on brief:

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[36] *TR.659:3-24.*
[37] *TR. 653:3-8.*
[38] *Exh. No. 310 at 1 (Taylor); Exh. No. 32 at 7 (Furman).*
[39] *PacifiCorp Brief at 4, ¶6.*

> While the Settlement does not finally resolve the important issue of PacifiCorp's inter-jurisdictional cost allocation methodology, it puts that issue on pace for a principled resolution that is fair to Washington ratepayers. The Settlement provides additional time for the parties to resolve inter-jurisdictional cost allocation for the long term. The inter-jurisdictional cost allocation methodology issue has gained significant momentum in other states since this case was filed and the parties will be able to capitalize on that momentum. Staff and the Company anticipate that the issue can be resolved within a matter of months.[40]

49 PacifiCorp makes the following commitment in its brief:

> As described by Mr. Buckley, Mr. Schooley and Ms. Kelly, the settling parties have developed a specific proposal and timeline for development of a permanent Washington solution of the inter-jurisdictional cost allocation issue. Immediately following commission orders in Utah and Oregon—and no later than December 1, 2004—formal discussions would be initiated. *TR. 764:24 – 765:3 (Buckley).* On April 1, 2005, a fairly extensive status report would be presented to the Commission, including recommendations for further proceedings. *Id. at 765:16 – 766:4; TR. 776:4-18 (Kelly).* This timeline permits the process to be informed by the MSP outcomes in PacifiCorp's other jurisdictions.[41]

PacifiCorp notes that "[t]he results presumably would be incorporated in the Company's next general rate case, which is expected to be filed during 2005."[42]

50 In light of the foregoing discussion, we determine that the Settlement Agreement satisfies us on the question of inter-jurisdictional cost allocation, representing as it does a significant intermediate step toward an enduring solution. In terms of a

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[40] *Staff Brief at 1, ¶ 2.*

[41] *PacifiCorp Brief at 17, ¶ 35*

[42] *Id. at (citing TR. 211:19-212:2 (Furman); TR. 330:6-9 (Omohundro)).*

compromise on revenue requirement for purposes of settlement, the settling parties' use of Protocol quite literally is a means to an end, an end that might have been achieved under Staff's allocation methodology, or even some third methodology.

51 Looking forward, the Settlement Agreement's use of Revised Protocol for reporting at least tacitly acknowledges progress toward an allocation methodology that will work in Washington as well as in other states where PacifiCorp provides service. More concretely, the Settlement Agreement establishes a process for expeditiously going forward and Staff and PacifiCorp, at least, are committed to vigorously pursue full resolution of this important matter on a timely basis. In light of these parties' statements on brief, quoted above, we will condition our approval of the Settlement Agreement by imposing the following requirements:

> (1) Immediately following commission orders in the pending proceedings concerning inter-jurisdictional cost allocation in Utah and Oregon—and no later than December 1, 2004—PacifiCorp will initiate discussions in Washington aimed at development of an agreed methodology for inter-jurisdictional cost allocation to be used by PacifiCorp in this jurisdiction.
>
> (2) On or before April 1, 2005, PacifiCorp will present a detailed status report to the Commission concerning inter-jurisdictional cost allocation, including recommendations for further proceedings in Washington.
>
> (3) By October 31, 2005, PacifiCorp will file, either in a general rate proceeding, or in an independent proceeding, a proposal to resolve inter-jurisdictional cost allocation in Washington.

3. Revenue Requirement

52 Parts of our discussion above at least imply that we find the settling parties' compromise on overall revenue requirement reasonable. We make that finding explicit here and turn now to a more detailed discussion of the point.

53 In 1997, the Washington Supreme Court reaffirmed the enduring principle stated in *Hope Natural Gas* that:

> It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unreasonable, judicial inquiry . . . is at an end. The fact that the method employed to reach that result may contain infirmities is not then important.[43]

54 Our overarching concern, then, is with the end results produced under the settlement. At this level, we focus on three key points: (1) revenue requirement; (2) overall return; and (3) rate spread and rate design. PacifiCorp, using the so-called original Protocol methodology, originally requested an increase in revenue requirement of $26.7 million, or about 13.5 percent. PacifiCorp filed extensive direct testimony and numerous exhibits in support, all of which were received into the record. Staff, intervenors, and Public Counsel filed extensive response testimony and exhibits on July 2, 2004. Staff using a so-called Control Area methodology, proposed a revenue requirement increase of $7.1 million, or about 3.6 percent.

55 ICNU did not present a full revenue requirements case but, through its two witnesses, proposed adjustments to reduce PacifiCorp's requested increase in Washington revenues by approximately $10.8 million. Public Counsel also did

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[43] *U S West v. Utils. and Transp. Comm'n*, 134 Wn.2d 48, 70, 949 P.2d 1321 (1997) (quoting *Federal Power Commission v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944)).

not present a full revenue requirements case, but proposed a rate decrease based in significant part on its proposed "hydro situs" allocation methodology.

56 PacifiCorp filed rebuttal testimony on July 28, 2004. In its rebuttal testimony, PacifiCorp included several updates, corrections, and adjustments, including acceptance of certain reductions to net power costs proposed by ICNU.[44] PacifiCorp revised its requested revenue requirement to $25.7 million. The proposed settlement provides for an additional $10.2 million in adjustments. This results in a revenue requirement of $15.5 million, an increase of about 7.8 percent. The settlement thus provides for a compromise on revenue requirement that results in rates that are approximately 60 percent of what PacifiCorp originally requested. This is well within the range of what is supported by the evidence.

57 The $15.5 million revenue requirement expressly includes $3.5 million in overall return.[45] This represents a return of 8.39 percent. The return level is within the range of the two alternatives presented by the cost of capital witnesses, Messrs. Hill and Hadaway.[46] We find that this is a reasonable overall return for PacifiCorp to earn.

58 Rate spread and rate design are not disputed issues. The settling parties agreed to adopt the recommendations regarding rate spread and rate design set forth in the Joint Testimony of Mr. Lazar (Public Counsel's witness), Mr. Schoenbeck

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[44] These are noted on Attachment B to the Settlement Agreement.

[45] The settling parties were unable to reach agreement on the individual items at issue in connection with the cost of capital. Public Counsel's arguments on brief that are based on an assumed capital structure and implied return on common equity component (*i.e.*, the methods Public Counsel argues may have been employed to reach the end result) simply are not relevant to our consideration of return under the circumstances present here.

[46] The Company, through Mr. Hadaway, proposed a rate of return of 8.743 percent overall. *Exh. No. 31 at 2:9.* Mr. Hill, on behalf of Staff and Public Counsel, recommended an overall rate of return of 7.72 percent. *Exh. No. 631 at 5:13-15.*

(ICNU's witness), and Ms. Steward (Staff's witness).[47] Exhibit No. 7 shows the rate effects assuming the adoption of the revenue requirement increase recommended in the Settlement Agreement, and following the rate spread and rate design recommendations made by these witnesses.

59 We turn next to an examination of the individual components of the Settlement Agreement under a three-part inquiry: (1) We ask whether any aspect of the proposal is contrary to law; (2) We ask whether any aspect of the proposal offends public policy; and (3) We ask if the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

60 We first turn briefly to the specific adjustments reflected in Attachments A and B to the Settlement Agreement. It is clear from Attachments A and B to the Settlement Agreement, and from various witnesses' testimony at the settlement hearing, that the settling parties were mindful of, and did take into account the adjustments proposed by all parties. Public Counsel argues, however, that we cannot accept the settling parties' representations about what individual adjustments represent.[48] ICNU argues that the Settlement Agreement does not fully account for adjustments proposed by ICNU's witnesses and should be rejected on that basis. ICNU summarizes its proposed adjustments at some length.[49]

61 As in the case of the settling parties' agreement to present the settlement using original protocol, the specific adjustments indicated in Attachments A and B are a means to an end.[50] ICNU developed through cross-examination and Public Counsel argues on brief that the settlement, in this sense, has a "black box"

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[47] *Exh. No. 621.*
[48] *Public Counsel Brief at 14-18.*
[49] *ICNU Brief at 29-40.*
[50] *See, e.g., TR. 374:4-6, 386:14-20 (Schooley); 659:18-660:9 (Braden).*

character.[51] This implied criticism ignores the fact that all settlements have a so-called black box quality to one degree or another—they are by nature compromises of more extreme positions that are supported by evidence and advocacy.[52] In addition, as do many settlements presented to the Commission, the Settlement Agreement here includes a disclaimer that:

> By executing this Settlement Agreement, no party shall be deemed to have approved, admitted or consented to the facts, principles, methods or theories employed in arriving at the terms of this Settlement Agreement, not shall any Party be deemed to have agreed that any provision of this Settlement Agreement is appropriate for resolving issues in any other proceeding.

For these reasons, except to the extent they help us understand the compromise nature of the parties' agreement to an overall revenue requirement, and to give us insight into things the settling parties considered in arriving at their compromise, close scrutiny of the individual adjustments is not required.

62 Ratemaking is not an exact science. As our Supreme Court has observed: "[t]he economic judgments required in rate proceedings are often hopelessly complex and do not admit of a single correct result."[53] Thus, while Public Counsel and ICNU would have us make different adjustments, or assign different values to certain of the adjustments made in the Settlement Agreement, we are confident in our judgment, made on the basis of the record before us, that the overall result in terms of revenue requirement is reasonable and well supported by the evidence.

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[51] *Id.; Public Counsel Brief at 5, ¶8; 9, ¶16; 18, ¶32.*

[52] Public Counsel and ICNU have been parties to many settlements presented to, and approved by, the Commission, including settlements that lack even the level of analytical detail present here.

[53] Footnote 43, *supra.*, 134 Wn.2d at 70.

63 In two instances, however, the settling parties ask us to expressly resolve underlying issues and to go beyond simply approving a level of costs to be included in rates. We refer here to the Settlement Agreement's provision concerning Trail Mountain and Environmental Remediation. With respect to these items, the Settlement Agreement proposes deferral accounting treatment without, in our judgment, providing adequate support for such treatment. The questions of the proper accounting treatment for these costs are currently before us in separate, unconsolidated dockets.[54] Those proceedings provide an opportunity to air fully all questions that relate to proper accounting treatment and will set the stage for consideration of whether and how any deferred costs might be recovered in rates.[55] Thus, in this Order, we preclude neither the requested accounting treatment nor the future recovery of these costs. We defer those decisions to the pending dockets and, if necessary, to a future rate proceeding.

64 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.[56]

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[54] PacifiCorp's petition for an accounting order concerning Trail Mountain is pending in Docket No. UE-031657, filed on October 13, 2003. PacifiCorp's petition for an accounting order concerning environmental remediation costs is pending in Docket No. UE- 031658, also filed on October 13, 2003.

[55] We note in this regard our concern over the settling parties' proposal that we approve deferred accounting treatment for Trail Mountain on a retroactive basis to April 1, 2001, some two and one-half years before PacifiCorp sought such treatment in Washington. Public Counsel and ICNU argue against such treatment in their briefs. Again, the matter is not sufficiently developed on the present record for us to make a decision, but we expect it to be fully developed in Docket No. UE-031657.

[56] *Exh. No. 4, pp. 7 (adjustment 5.3), 9 (adjustment 8.1).*

65 For the reasons discussed above, we are satisfied that the end results produced under the Settlement Agreement, modified as required by removal of certain costs, represent a reasonable compromise of the issues, are well supported by the evidence, and provide for rates that are fair, just, reasonable and sufficient.

4. Decoupling

66 NRDC states its "central proposition, which no other party has yet contested" is that "Washington's regulatory status quo unintentionally undercuts the crucial energy-efficiency element of least cost planning, and the . . .Commission urgently needs to begin fixing the problem."[57] NRDC argues that the Commission should find, consistent with ¶13 of the Settlement Agreement, that it is in the public interest to investigate a true-up mechanism designed to eliminate financial disincentives associated with the Company's demand-side initiatives.

67 PacifiCorp states that it is interested in implementing a decoupling mechanism, but did not develop a specific mechanism for purposes of this proceeding.[58] PacifiCorp describes the settlement as recommending that the "Commission's order in this proceeding address the issue of whether it is in the public interest to investigate . . . a true-up mechanism."[59] PacifiCorp describes what it has in mind as "a simple system of periodic true-ups in electric rates, designed to correct for disparities between utilities' actual fixed cost recoveries and the revenue requirement approved by the Commission."[60]

68 ICNU argues that there are no disincentives regarding demand-side management in Washington and that adopting the settlement proposal would

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[57] *NRDC Brief at 1.*
[58] *PacifiCorp Brief at 53-54, ¶119.*
[59] *Id.*
[60] *Id. (citing Exh. No. 21 at 7:1-3 (Johansen)).*

initiate an "expensive and unnecessary proceeding."[61] ICNU focuses on the fact that PacifiCorp has a system benefit charge (SBC) in Washington through which the Company recovers its prudently incurred demand side management (DSM) costs. ICNU states that PacifiCorp's DSM investments increased following approval of the SBC from $2.8 million in 2001, to $6.5 million in 2002, and argues that "[t]here is no evidence that PacifiCorp has failed to make DSM investments due to any alleged financial disincentives."[62]

69 It is not necessary, in our view, to make a public interest "finding" before initiating a proceeding. Rather, the purpose of most proceedings is to determine the public interest with respect to the subject of the proceeding. We do think, however, based on the record in this proceeding, that it would be beneficial for the parties, and others who may be interested, to informally investigate whether, and to what degree, there are financial disincentives to PacifiCorp investing in DSM at appropriate levels and, if so, to develop a proposal for reducing or eliminating any such disincentives. Accordingly, we would expect the Company to initiate discussions, as provided in the Settlement Agreement. After such discussion, PacifiCorp may propose a true-up mechanism, or some other approach to reducing or eliminating any financial disincentives to DSM investment. This could be in connection with a general rate proceeding such as the Company suggests will be filed sometime in 2005, or in another proceeding at whatever time is appropriate.

FINDINGS OF FACT

70 Having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that

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[61] *ICNU Brief at 41.*

[62] *Id., ¶75 (citing TR. 232:11-233:7 (Furman)).*

include findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.

71 (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 electric companies.

72 (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 may be 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.

73 (3) The rates proposed by tariff revisions filed by PacifiCorp on December 16, 2003, and suspended by prior Commission order, are not just, fair, or reasonable and should be rejected. *RCW 80.28.010.*

74 (4) PacifiCorp's existing rates for electric service provided in Washington State are insufficient to yield reasonable compensation for the service rendered. *RCW 80.28.010; RCW 80.28.020.*

75 (5) PacifiCorp requires relief with respect to the rates it charges for electric service provided in Washington State. *RCW 80.01.040; RCW 80.28.060.*

76 (6) The Commission must determine the fair, just, reasonable, and sufficient rates to be observed and in force under PacifiCorp's tariffs that govern its rates, terms, and conditions of service for providing electricity to customers in Washington State. *RCW 80.28.020.*

77 (7) The Commission's demurral of the requests in ¶¶ 12.b. and 12.c. of the Settlement Agreement and removal of the costs attributable to the issues addressed in those paragraphs from the proposed revenue deficiency of $15.5 million, results in a revenue deficiency of $15,057,000.

78 (8) 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.

79 (9) The rates, terms, and conditions of service that result from this Order, based on a revenue deficiency of $15,057,000, are fair, just, reasonable, and sufficient. *RCW 80.28.010; RCW 80.28.020.*

80 (10) The rates, terms, and conditions of service that result from this Order are neither unduly preferential nor discriminatory. *RCW 80.28.020.*

CONCLUSIONS OF LAW

81 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

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 December 16, 2003, and suspended by prior Commission order, are not just, fair, or reasonable and should be rejected. *RCW 80.28.010.*

84 (3) PacifiCorp's existing rates for electric service provided in Washington State 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 State. *RCW 80.01.040; RCW 80.28.060.*

86 (5) The Commission must determine the fair, just, reasonable, and sufficient rates to be observed and in force under PacifiCorp's tariffs that govern its rates, terms, and conditions of service for providing electricity to customers in Washington State. *RCW 80.28.020.*

87 (6) 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 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 and the costs attributable to the issues addressed in those paragraphs are removed from the proposed revenue deficiency of $15.5 million, resulting in a revenue deficiency of $15,057,000. *WAC 480-09-465; WAC 480-090-466.*

88 (7) The rates, terms, and conditions of service that result from this Order are fair, just, reasonable, and sufficient. *RCW 80.28.010; RCW 80.28.020.*

89 (8) The rates, terms, and conditions of service that result from this Order are neither unduly preferential nor discriminatory. *RCW 80.28.020.*

90 (9) The Commission's prior orders in this proceeding, and in any related proceedings discussed in the body of this Order, should be amended to the extent necessary, or rescinded to the extent required, to effectuate the provisions of this Order. *RCW 80.04.210; WAC 480-09-815.*

91 (10) The Commission Secretary should be authorized to accept by letter, with copies to all parties to this proceeding, a filing that complies with the requirements of this Order. *WAC 480-09-340.*

92 (11) The Commission should retain jurisdiction over the subject matters and the parties to this proceeding to effectuate the terms of this Order. *Title 80 RCW.*

ORDER

THE COMMISSION ORDERS THAT:

93 (1) The proposed tariff revisions PacifiCorp filed on December 16, 2003, which were suspended by prior Commission order, are rejected.

94 (2) 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, including adjustment of the revenue deficiency to the amount of $15,057,000.

95 (3) Our approval of the Settlement Agreement is conditioned by the following requirements:

(a) Immediately following commission orders in the pending proceedings concerning inter-jurisdictional cost allocation in Utah and Oregon—and no later than December 1, 2004—PacifiCorp will initiate discussions in Washington aimed at development of an agreed methodology for inter-jurisdictional cost allocation to be followed by PacifiCorp in this jurisdiction.

(b) On or before April 1, 2005, PacifiCorp will present a detailed status report to the Commission concerning inter-jurisdictional cost allocation, including recommendations for further proceedings in Washington.

(c) By October 31, 2005, PacifiCorp will file, either in a general rate proceeding, or in an independent proceeding, a proposal to resolve inter-jurisdictional cost allocation in Washington.

96 (4) 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. The required tariff sheets must be filed by November 5, 2004, and shall bear an effective date of November 16, 2004.

97 (5) 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.

98 (6) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective this ____ day of October 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. 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.

REVISED 08/27/2004

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PACIFICORP d/b/a PACIFIC POWER AND LIGHT COMPANY, Respondent.	**DOCKET NO. UE-032065** **SETTLEMENT AGREEMENT**

PARTIES

1. This Settlement Agreement is entered into by PacifiCorp d/b/a Pacific Power and Light Company ("the Company"), Staff of the Washington Utilities and Transportation Commission ("Staff"), and Natural Resources Defense Council ("NRDC") (collectively, the "Parties") regarding PacifiCorp's pending general rate filing in the above docket.

RECITALS

2. On December 16, 2003, PacifiCorp filed revised tariff schedules to effect a $26.7 million (13.5%) increase in its base prices to Washington electric customers. The filing was based on normalized results of operations for Washington for the test period ending March 31, 2003. The filing was suspended by the Commission at its January 14, 2004 public meeting.

3. At the prehearing conference on January 26, 2004, the Public Counsel Section of the Office of Attorney General ("Public Counsel"), Industrial Customers of Northwest

Utilities ("ICNU"), Citizens' Utility Alliance, the Energy Project,[1] and NRDC were granted intervention in the proceeding.

4. Following discovery by Staff and the other parties on the Company's direct testimony, Staff, Public Counsel, ICNU, the Citizens' Utility Alliance and NRDC filed opposing testimony on June 30, 2004. Staff, for its part, recommended a revenue requirement increase of $7.1 million in its testimony. (Braden, Exhibit No. ___ (RAB-1T) at 15.)

5. In the Company's rebuttal testimony filed July 28, 2004, the Company reduced its requested rate relief to $25.7 million.

6. Staff and other parties to the case conducted discovery on the Company's rebuttal testimony. After analysis of the discovery responses, the Parties commenced settlement discussions for purposes of resolving or narrowing the contested issues in this proceeding.

7. The Parties have reached agreement on the contested issues in this proceeding and wish to present their agreement for the Commission's consideration. The Parties therefore adopt the following Settlement Agreement, which is entered into by the Parties voluntarily to resolve matters in dispute among them in the interests of expediting the orderly disposition of this proceeding. The Settlement Agreement is being filed with the Commission as a "Multiparty Settlement" pursuant to WAC 480-07-730(3).

[1] Comprising the Energy Project, Opportunity Council, Northwest Community Action Center, and Industrialization Center of Washington.

AGREEMENT

8. Inter-Jurisdictional Cost Allocation.

a. Background. The Company's direct testimony in this proceeding proposed adoption by the Commission of the "Protocol" as the basis for inter-jurisdictional cost allocation. Since the filing of the Company's direct case, the Company as part of the Multi-State Process, or MSP, developed revisions to the Protocol. The Revised Protocol, which was filed in Oregon, Utah, Idaho and Wyoming, incorporates these revisions. Although the Company included the Revised Protocol as an exhibit in its rebuttal testimony, the Company proposed, as an interim solution, that this case be decided on the basis of the Protocol. Staff, for its part, calculated its revenue requirement recommendation on the basis of a Control Area methodology, which Staff also proposed as an interim solution pending the development of a Washington-only approach that would be developed through a collaborative process involving Staff, the Company and other parties. The Parties thus lacked agreement on a common basis for evaluating the Company's case. The Protocol represents the only common basis upon which the Parties could evaluate each other's proposed adjustments. Moreover, both Staff and the Company were proposing a solution that would be interim in nature.

b. Recommendation. The Parties agree that PacifiCorp's revenue requirement in this proceeding will be calculated on the basis of the Protocol. Use of the Protocol method is for purposes of this proceeding only. Following the conclusion of this proceeding, the Parties agree to jointly discuss development of a mutually acceptable cost allocation proposal applicable to Washington. Until such time as a mutually acceptable cost allocation proposal is agreed upon by the Parties and presented to the Commission for approval

in a subsequent proceeding, the Parties agree that the Company will use the Revised Protocol as the basis for its routine regulatory filings with the Commission, including filing requirements pursuant to Chapters 480-100 WAC and 480-146 WAC and successor provisions. Neither the use of the Protocol for settlement in this proceeding, nor the use of the Revised Protocol for future reporting periods, shall be considered an agreement by any Party that such inter-jurisdictional allocation methodologies are sufficient or proper for use in any future proceedings before the Commission. The Company agrees to maintain its books and records and the existing capability of its power cost and allocation models to permit the recalculation of the Company's Washington cost of service as reasonably requested by Staff or other interested persons. To the extent a cost study is requested, the provisions of WAC 480-07-400(1)(c)(iii) shall apply to such request.

c. Other Procedural Issues. On August 19, 2004, Staff filed a Motion to Strike certain portions of the Company's rebuttal testimony relating to the Revised Protocol. Consistent with the proposed resolution of the inter-jurisdictional cost allocation issues in subparagraph 8(b) above, the Parties agree for purposes of this settlement that the Motion should be granted, and the Company will not offer those portions of the testimony and exhibits set forth in Attachment A to Staff's Motion; provided, however, that Exhibit Nos. ___ (ALK-5) and ___ (DLT-16) shall be admitted for the limited purpose of defining the Revised Protocol for the Company's routine regulatory filings with the Commission in accordance with subparagraph 8(b) above. In the event the Commission rejects this Settlement Agreement or accepts the Settlement Agreement upon conditions not proposed herein, the Company reserves the right to oppose the Motion to Strike and to propose to offer such testimony in any subsequent hearings conducted pursuant to WAC 480-07-750(2)(a).

9. Revenue Requirement. The Parties agree that PacifiCorp will reduce its revenue requirement request to reflect the adjustments listed on Attachment A to this Settlement Agreement. PacifiCorp's rebuttal testimony supported a revenue requirement increase of $25.7 million. The adjustments listed on Attachment A reduce this amount by approximately $10.2 million, resulting in a recommended revenue requirement increase of $15.5 million.

10. Individual Revenue Requirement Issues.

a. Cost of Capital. A number of issues were in dispute among the Parties with respect to cost of capital, including return on equity, common equity ratio, and whether short-term debt should be included in the capital structure. Although the Parties were unable to reach agreement on each of the components of the cost of capital, they agree upon an adjustment of $3.5 million to the revenue requirement proposed in the Company's rebuttal case which, when considered along with the other adjustments in this Settlement Agreement, produces an overall rate of return of 8.39%. With respect to the individual cost of capital components at issue upon which the Parties were unable to reach agreement, the Parties agree not to (1) represent that the overall cost of capital adjustment represents any particular outcome on any particular issue, or (2) characterize this settlement as reflecting a particular result on any individual issue.

b. Net Power Costs. The Parties agree that the Company's filed net power costs should be reduced from $555 million on a Total Company basis (as stated in the Company's rebuttal case) to $534.1 million. The individual adjustments adopted for purposes of this Settlement Agreement are listed in Attachment B. Washington's share of these adjustments to Net Power Costs, based upon the Protocol allocation method, is approximately $1.93 million, which is the amount shown on Attachment A.

c. Prudence of Resource Acquisitions. The recommended revenue requirement reflects, for purposes of this proceeding only, the inclusion in rates of the resources acquired by the Company since its last litigated general rate proceeding in Washington, Cause No. U-86-02. These resources include those described in the Joint Report in the Prudence Review of Generating Resources Acquired Since 1986, Exhibit No. ___ (MTW-4) ("Joint Report"), as well as West Valley and Gadsby. Due to Staff's use of a Control Area approach as the basis for cost allocations in its revenue requirement recommendation, Staff does not take a position with respect to the prudence for purposes of Washington rates of those resources acquired since 1986 located in the Company's Eastern Control Area (West Valley, Gadsby, Craig, Hayden, Foote Creek, and Cholla). The prudence of those resources will be examined in a subsequent proceeding if and when it is determined that the inter-jurisdictional cost allocation methodology requires their prudence to be evaluated for purposes of setting Washington rates. With respect to the resources described in the Joint Report that are located in the Company's Western Control Area (Hermiston and James River), Staff agrees that these resources were prudently acquired for purposes of serving Washington customers, and are properly included in the Company's rate base for purposes of this case and subsequent proceedings.

d. Recovery of RTO-Related Costs. The revenue requirement recommendation excludes recovery of costs incurred by the Company in connection with formation of a Regional Transmission Organization in the Northwest. The Parties agree that the Company may seek an accounting order from the Commission authorizing the deferral of such costs for consideration in future rate proceedings. Staff will evaluate any such petition for an accounting order on its merits.

11. Rate Spread and Rate Design. The Parties agree to adopt the recommendations regarding rate spread and rate design set forth in the Joint Testimony of Jim Lazar, Don Schoenbeck and Joelle Steward, Exhibit No. __ (JT-1T).

12. Regulatory Assets and Deferred Debits.

a. FAS 87. The Parties agree and request confirmation by the Commission that the Company's actuarially determined FAS 87 pension expense is a recoverable cost. Staff agrees that it will expedite the processing of the Company's Request for an Accounting Order Regarding Treatment of Pension Liability filed in October 2003.

b. Trail Mountain. The Parties recommend that the Commission issue an accounting order authorizing the Company to accumulate the $46.3 million reflecting the Company's unrecovered investment in Trail Mountain Mine and related mine closure costs and to record such investment in Account 182.3. The Parties request that the Commission approve deferral of these costs as of April 1, 2001. In addition, the Parties ask that the Commission authorize five years as a reasonable period over which to amortize the costs associated with the Trail Mountain Mine closure, with amortization commencing with the establishment of the deferral, April 1, 2001, and ending March 2006.

c. Environmental Remediation. The Parties recommend that the Commission issue an accounting order authorizing the Company to record and defer costs prudently incurred in connection with its environmental remediation program, on an ongoing basis. Costs eligible for such accounting treatment shall include only those amounts relating to work of outside vendors and contractors for investigation and feasibility studies, sampling, evaluation, monitoring, materials, remediation, removal, disposal and post-remediation work, and do not include costs related to Company personnel or legal costs. In addition, the Parties

request the Commission find that ten years is a reasonable period over which to amortize these environmental remediation costs.

d. Other Regulatory Assets. Except as specifically set forth in the adjustments, all remaining regulatory assets and liabilities are recognized in rates for purposes of this settlement.

13. Removing Disincentives to Demand-Side Initiatives. The Parties recommend that the Commission's Order in this proceeding address the issue of whether it is in the public interest to investigate a true-up mechanism designed to eliminate financial disincentives associated with the Company's demand-side initiatives, based on a review of NRDC's testimony and other information in the record. Upon such a finding, the Company will initiate discussions with Staff and interested parties to review the effects of demand-side investments on the recovery of fixed costs and other potential disincentives to such investments by the Company, and to address the potential structure of a true-up mechanism that would make recovery of these costs independent of retail electricity sales. After such discussions, the Company may propose a true-up mechanism for consideration by the Commission at the earliest practicable time.

14. General Provisions.

a. The Parties agree that this Settlement Agreement is in the public interest and would produce rates for the Company that are fair, just, reasonable and sufficient. The Parties agree to support this Settlement Agreement as a settlement of all contested issues in this proceeding. The Parties understand that this Settlement Agreement is not binding on the Commission in ruling on the Company's rate filing.

b. The Parties agree that this Settlement Agreement represents a compromise in the positions of the Parties. As such, conduct, statements and documents disclosed in the negotiation of this Settlement Agreement shall not be admissible as evidence in this or any other proceeding.

c. The Parties have negotiated this Settlement Agreement as an integrated document. Accordingly, the Parties recommend that the Commission adopt this Settlement Agreement in its entirety.

d. The Parties shall cooperate in submitting this Settlement Agreement promptly to the Commission for acceptance, and shall cooperate in developing supporting testimony as required by WAC 480-07-740(2)(b). The Parties agree to support the Settlement Agreement throughout this proceeding, provide witnesses to sponsor such a Settlement Agreement at a Commission hearing, and recommend that the Commission issue an order adopting the settlements contained herein. In the event the Commission rejects this Settlement Agreement, the provisions of WAC 480-07-750(2)(a) shall apply. In the event the Commission accepts the Settlement Agreement upon conditions not proposed herein, or approves a revenue requirement increase which is different in amount than recommended in this Settlement Agreement ("Revised Rate Increase"), each Party reserves the right, upon written notice to the Commission and all parties to this proceeding within five (5) days of the Commission's order, to state its rejection of the conditions. In such event, the Parties immediately will request the prompt reconvening of a prehearing conference for purposes of establishing a procedural schedule for the completion of the case pursuant to WAC 480-07-750(2)(a). The Parties agree to cooperate in development of a schedule that concludes the proceeding on the earliest possible date, taking into account the needs of the Parties in

participating in hearings and preparing briefs. If necessary, the Company will consider extending the suspension period for such period as is reasonably necessary to accommodate the revised procedural schedule; provided, however, that the Parties recommend that the Company be authorized to implement as of the end of the current suspension period an increase in the amount of the Revised Rate Increase, subject to refund, pending issuance of a final order by the Commission.

e. The Parties enter into this Settlement Agreement to avoid further expense, inconvenience, uncertainty and delay. By executing this Settlement Agreement, no Party shall be deemed to have approved, admitted or consented to the facts, principles, methods or theories employed in arriving at the terms of this Settlement Agreement, nor shall any Party be deemed to have agreed that any provision of this Settlement Agreement is appropriate for resolving issues in any other proceeding.

f. This Settlement Agreement may be executed in counterparts and each signed counterpart shall constitute an original document.

This SETTLEMENT AGREEMENT is entered into by each Party as of the date entered below.

DATED: August 27, 2004.

PacifiCorp

By _____
Christy A. Omohundro
Vice President, Regulation

Staff of the Washington Utilities and Transportation Commission

By _____
Roger A. Braden
Assistant Director Energy

Natural Resources Defense Council

By _____
Ralph Cavanagh
Energy Program Director

REVISED 08/27/2004

ATTACHMENT A

REVENUE REQUIREMENT ADJUSTMENTS

PacifiCorp Revenue Requirement per Rebuttal Case	$25,659,000
Adjustments	10,158,000
Annual Revenue Requirement for settlement purposes	$15,501,000

Individual Adjustments:

Adjustment	Amount ($)	Comment
Net power costs	(1,932,000)	Per Attachment B
Temperature normalization	(615,000)	Staff adjustment (revised)
Working capital	(622,000)	Staff, Public Counsel adjustment
Incentive pay-out	(697,000)	Staff adjustment
International assignee costs	(2,000)	Staff adjustment
IRS settlement	(1,311,000)	Staff, Public Counsel adjustment
Property insurance	(630,000)	Staff adjustment
Environmental costs	(32,000)	Staff adjustment
Severance normalization	(177,000)	Staff adjustment
Property tax adjustment	156,000	Update
RTO Costs	(340,000)	ICNU, Staff adjustment; subject to deferred accounting
Cost of capital	(3,500,000)	Reflects 8.39% overall rate of return
Unspecified ICNU/Public Counsel adjustments	(600,000)	
Interest expense true-up of adjustments	144,000	
Total Adjustments	(10,158,000)	
Adjusted Rate Increase	15,501,000	

ADJUSTMENTS TO NET POWER COSTS

Annual Net Power Costs, Rebuttal Case	$555,013,679
Adjustments	20,876,709
Annual Net Power Costs for settlement purposes	$534,136,970

Individual Adjustments:

Adjustment	Amount ($)	Comment
Remove Swift	(8,815,259)	Remove near-term reserve impact on Swift 1
Aquila hydro hedge	(1,750,000)	Staff, ICNU adjustment (any payments also excluded)
J. Aron temperature hedge	(2,100,000)	Staff, ICNU adjustment (any payments also excluded)
Morgan Stanley temperature hedge	(1,800,000)	Staff, ICNU adjustment (any payments also excluded)
Hydro normalization	(4,597,658)	Staff adjustment to exclude "extraordinary" years
Mid-C Market caps	(1,585,793)	Staff adjustment to increase Bridger generation
CT dispatch	(228,000)	ICNU adjustment
TOTAL	(20,876,709)	
Washington Allocated Share	(1.93 million)	

NOTE: The Company included several updates, corrections, or adjustments to Net Power Costs in its Rebuttal Case. The Company's Rebuttal Case adopted the following adjustments proposed by ICNU in the following amounts (stated on a Total Company basis):

Adjustment	Amount ($)	Reference in Rebuttal Testimony
West Valley heat rates	(1,574,536)	Widmer at 3, 44
Wyodak capacity	(1,626,984)	Widmer at 29-29
Fort James cogeneration	(401,733)	Widmer at 28
Market caps	(2,931,927)	Widmer at 3
Quick start benefits	(1,000,000)	Widmer at 40
TOTAL	(7,535,180)	

[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.

[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