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Via Electronic Mail and Federal Express

Mark Sidran, Chairman
Patrick Oshie, Commissioner
Philip Jones, Commissioner
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 S. Evergreen Park Drive, S.W.
Olympia, WA 98504-7250

Re: PacifiCorp Accounting Petitions, Docket Nos. UE-031657, UE-031658
and UE-031878.

Dear Commissioners:

The Industrial Customers of Northwest Utilities (“ICNU”) respectfully requests that the Washington Utilities and Transportation Commission (“Commission” or “WUTC”) reject PacifiCorp’s three separate requests for accounting orders in Docket Nos. UE-031657, UE-031658 and UE-031878. PacifiCorp is requesting that the Commission issue accounting orders: 1) for a deferred account related to unrecovered costs associated with the Trail Mountain mine closure (Docket No. UE-031657); 2) for a deferred account related to the Company’s environmental remediation program (Docket No. UE-031658); and 3) to record a regulatory asset related to its pension liability (Docket No. UE-031878). At this time, ICNU does not address any substantive deficiencies regarding PacifiCorp’s requests and reserves the right to raise its concerns if PacifiCorp seeks to include any costs in rates. ICNU, however, believes the requests should be rejected or modified because they violate the legal requirement that utilities may not defer any costs or create a regulatory asset without prior Commission approval.

Each of PacifiCorp’s requests seeks Commission approval to create a deferred account or regulatory asset related to the Company’s past actions. PacifiCorp’s Trail Mountain mine closure request seeks to defer costs starting April 1, 2001, and the environmental remediation request seeks to defer costs incurred as early as 1991. However, PacifiCorp did not request Commission approval of either of these deferred accounts until October 10, 2003. Similarly, PacifiCorp’s request for a regulatory asset related to its pension liability was filed on November 14, 2003, but it is requesting Commission approval of actions taken prior to that date.

All three requests violate the Commission's long established precedent against utilities unilaterally creating deferred accounts and regulatory assets. The Commission recently reaffirmed the "longstanding principle that the Commission absolutely requires a company that wishes to book costs to a deferral account for treatment as a regulatory asset to first apply for and obtain express authority to do so." Re Puget Sound Energy, Docket Nos. UG-040640, UE-040641, UE-031471 and UE-032043, Order No. 6 at ¶ 170 (Feb. 18, 2005). PacifiCorp's requests violate this "longstanding principle" by requesting Commission approval after, instead of prior to, the creation of the deferred accounts and regulatory asset.

PacifiCorp's requests also violate the statutory requirement that rates be set on a prospective basis and prohibits retroactive ratemaking. *See* RCW § 80.28.020; Re Puget Sound Energy, Docket No. UE-010410, Order Denying Petition at ¶ 7 (Nov. 9, 2001). The Commission has explained that the "evil in retroactive ratemaking" is that the "consumer has no opportunity prior to receiving or consuming the service to learn what the rate is or to participate in a proceeding by which the rate is set." WUTC v. Puget Sound Power & Light Company, Docket No. U-81-41, Sixth Suppl. Order at 17-18 (Dec. 19, 1988). The Commission has concluded that, to avoid retroactive ratemaking concerns, a utility should give notice that it is seeking a deferred account and that the relevant date of notice is the date the utility requests the deferred account. *See Re PacifiCorp*, Docket No. UE-020417, Third Suppl. Order at ¶¶ 25-26 (Sept. 27, 2002).^{1/} According to this precedent, PacifiCorp cannot defer any amounts or create a regulatory asset prior to the date of the Company's formal request to the Commission.

ICNU requests that the Commission reject PacifiCorp's requests because they seek to defer costs prior to the date of either the Company's deferral request or any Commission order approving the deferred account or regulatory asset. In addition, PacifiCorp's requests, if approved, would set a poor precedent and would create ambiguity regarding the appropriateness and legality of collecting old costs.

Sincerely Yours,



Melinda J. Davison

cc: Robert Cromwell
Christy Omohundro
James Van Nostrand

^{1/} The rule against retroactive ratemaking prohibits a utility from legally deferring any amounts until after a Commission order approves the request.