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BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF)	
PACIFICORP FOR AUTHORITY TO)	Docket No. 20000-ET-03-205
IMPLEMENT A POWER COST ADJUSTMENT)	(Record No. 8581)
MECHANISM)	
)	
)	

**OFFICE OF CONSUMER ADVOCATE BRIEF REGARDING PACIFICORP'S,
REQUEST TO IMPLEMENT A POWER COST ADJUSTMENT MECHANISM**

The Office of Consumer Advocate (“OCA”) respectfully submits this brief in support of its position that PacifiCorp’s (“Company”) Power Cost Adjustment Mechanism (“PCAM”) cannot be granted in its current form pursuant to the PUBLIC SERVICE COMMISSION OF WYOMING PROCEDURAL RULES AND SPECIAL REGULATIONS, Ch. 2, §§ 249 and 250 (“Sections 249 and 250”). Furthermore, the Company has not met the statutory burden in WYO. STAT. § 37-2-121 to have its PCAM authorized as a form of nontraditional ratemaking. Specifically, the Company has not demonstrated to the Commission by substantial evidence that the PCAM it proposes is in the public interest.

ISSUES

I. WHETHER PACIFICORP'S PCAM CAN BE GRANTED PURSUANT TO PUBLIC SERVICE COMMISSION OF WYOMING PROCEDURAL RULES AND SPECIAL REGULATIONS, CH. 2, § 249.

II. WHETHER PACIFICORP'S PCAM APPLICATION IS A REQUEST FOR NONTRADITIONAL RATE MAKING PURSUANT TO WYO. STAT. § 37-2-121.

III. WHETHER PACIFICORP DEMONSTRATED BY SUBSTANTIAL EVIDENCE THAT THE PROPOSED PCAM SUPPORTS AND IS CONSISTENT WITH THE PUBLIC INTEREST AS REQUIRED BY WYO. STAT. § 37-2-121.

IV. WHETHER THE OCA PROPOSALS ARE MORE ALIGNED WITH THE PUBLIC INTEREST THAN THE COMPANY'S PROPOSAL.

V. WHETHER DEFERRALS ALLOW THE COMPANY TO RECOVER EXTRAORDINARY EXPENSES RELATED TO POWER GENERATION AND ACQUISITION.

ARGUMENT

I. The Commission cannot grant PacifiCorp its PCAM pursuant to PUBLIC SERVICE COMMISSION OF WYOMING PROCEDURAL RULES AND SPECIAL REGULATIONS, Ch. 2, §§ 249 and 250.

A utility is allowed to pass on to its customers in their rates, known or prospective cost increases or decreases in the utility's **wholesale utility commodity** if:

- (a) The pass on is for wholesale utility commodity cost increases and decreases not under this Commission's jurisdiction;
- (b) The pass on will not increase the utility's rate of return, and its rate of return is at or below that last authorized by the Commission (if the rate of return is in excess of that authorized the pass on amount will be reduced accordingly);
- (c) The pass on is applied on an equal or proportionate basis to all class rates and the rate therein (excluding minimum charges);
- (d) All pass on charges are filed as a separate cumulative rate rider or surcharge which will be blended into base rates at appropriate intervals in general rate case proceedings or as otherwise ordered by the Commission;
- (e) There is provision for interest on over-collections to be made part of the refund. Interest will include any interest received by the utility as ordered by the Federal Energy Regulatory Commission and, otherwise or in addition thereto, interest as determined by the Commission; and
- (f) As a part of all pass on filings under this rule and balancing account filings under Section 250, the applicant utility must provide documentation that the gas, electric or water commodity costs supporting the proposed rate change are the most economical option reasonably available to the utility and its rate payers. The documentation should demonstrate all efforts and options available to the utility to serve its customers at the lowest possible cost consistent with safe and reliable service.

PUBLIC SERVICE COMMISSION OF WYOMING PROCEDURAL RULES AND SPECIAL REGULATIONS, Ch. 2, §§ 249.

The Company is required to meet all the requirements stated above for the application to be considered a Section 249 pass-on mechanism. The Company requests that it be allowed to recover costs other than the wholesale utility commodity costs, such as generation. PPL Exhibit 1, p.8, lines 2-10.

In addition, the band sharing proposed by the Company could cause PacifiCorp to exceed its authorized rate of return. The Company's proposed dead band and sharing bands allow the Company to keep a portion of the decreased commodity cost, which causes the Company's rate of return to increase contrary to Section 249(b). If prices decreased significantly the Company's rate of return would rise because the PCAM is not on a dollar for dollar basis.

Section 250 allows a utility to track and recover only its **wholesale commodity purchases** as specified by Section 249. The Company includes items other than the wholesale commodity cost in its application. The balancing account in Section 250 assures the Company does not ultimately over collect or under collect. The only way Section 250 can assure a Company does not over or under collect is if the pass-on is on a dollar for dollar basis. The Commission has never approved a pass on that was not on a dollar for dollar basis.

During cross-examination by the OCA, PacifiCorp's witness Doug Larson, Vice President of Regulation, admitted that the proposed PCAM is not on a dollar for dollar basis:

No. As I have previously testified to that, over the course of informal and formal discussions with parties, there were requests of the company that we look at something other than dollar-for-dollar recovery and, therefore, in trying to be responsive to those requests, we put forward a PCAM proposal that the Commission has in front of it today and based on the discussions at the hearings have also given the Commission some alternatives to that PCAM proposal that the company could live with.

Transcript p. 610 lines 6-14. (See also Transcript p. 105 line 12, cross examination of PacifiCorp witness Widmer.)

The Company's proposed PCAM cannot be made to fit within the framework of Sections 249 and 250 simply by the company claiming it is a Section 249 and 250 application, and a claim that in Docket No. 20000-ER-02-184 it was directed to file a PCAM under Sections 249 and 250. Whether or not the Company was encouraged or directed by the Commission to file a PCAM, the Commission certainly did not order, imply, or even hint that the Company should file this particular PCAM, which is not on a

dollar for dollar basis, includes items other than the wholesale commodity and employs sharing bands, all clearly contrary to Sections 249 and 250.

Section 249, Electric Gas and Water Wholesale Utility Commodity Purchase Pass on Procedure, and Section 250, Electric Gas and Water Wholesale Utility Commodity Balancing Account as the Basis for Periodic Pass on Filings, of the Public Service Commission of Wyoming Procedural Rules and Regulations were properly promulgated in General Order Number 46, on October 8, 1980. The Wyoming Supreme Courts has held that, “rules and regulations adopted pursuant to statutory authority and properly promulgated have the force and effect of law.” *Distad v. Cubin*, 633 P.2d 167, 176 (Wyo. 1981). The Wyoming Supreme Court further found that, “PSC rules, like the statutes from which they emerge, are strictly construed.” *Montana Dakota Utilities Co. v. Public Service Commission of Wyoming*, 847 P.2d 978 (Wyo. 1993). “This rule of strict construction appropriately limits the exercise of governmental agency powers to those expressly enumerated by constitution or statute, and to those implied or incidental powers necessary and proper to carry out the enumerated powers. Creative statutory construction is not compatible with strict statutory construction.” *Public Service Commission of Wyoming v. Formal Complaint of WWZ Co.*, 641 P.2d 183, 186 (Wyo. 1982). If the Commission properly construes these unambiguous rules it is impossible to fit the Company’s PCAM within the rules.

A. The Company was not ordered to file this PCAM.

The Company claims that, “a fair reading of the Order in the 2002 Rate Case and the dissent of Commissioner Furtney discloses that a primary basis for the Commission’s disallowance of the \$91 million was the fact that PacifiCorp did not have a PCAM in place.” PPL Exhibit 8, p. 4. The Company points to four specific quotes in support of its position:

"PacifiCorp seeks here to include Hunter Number 1 costs in rates

through a three-year surcharge, an amortization mechanism to collect excess power costs beyond the level of those already allowed for Pacific rates. By our Rules 249 and 250, we have long ago established procedures for passing on to customers changes in wholesale commodity costs which are outside of the Commission's jurisdiction."

Transcript p. 632 lines 2-9.

"We note that the exception to the rule against retroactive ratemaking recognized by the courts here is for automatic rate adjustment mechanisms, such as a gas balancing account, which, by its very nature, requires a retrospective analysis. That mechanism with its retroactive aspect was available to PacifiCorp at all times pertinent to this case as well as in those years when PacifiCorp obtained benefits for itself and its shareholders but not having such a retrospective balancing account in place."

Transcript p. 633 lines 7-16.

"The purchase commodity cost adjustment and balancing account mechanisms which we set up under Rules 249 and 250 were designed to address the situation in which wholesale commodity costs vary. These rules allow the costs to be identified, scrutinized and collected accurately so that in the end retail customers would pay those costs and utilities would collect them on a dollar-for-dollar basis. "The use of the mechanism offered by these rules is not mandatory. The utilities may elect to go forward without the protection they offer. PacifiCorp has elected in the past not to utilize the mechanism, but to rely upon the amounts allowed in base rates to collect the power costs. In this situation, the results may be that rates over collect power costs to the benefit of the company and its shareholders or it may be that they under collect power costs to their detriment."

Transcript pp. 633-634.

"When PacifiCorp elected to not avail itself of the protection of the Rules 249 and 250, it did so voluntarily, evidencing a willingness to absorb the burdens and the benefits which can come from not adjusting purchased power costs in rates except in general rate cases."

Transcript pp. 634 lines 11-16.

All references to the Order in Docket Number 20000-ER-02-184 involve a pass-on mechanism that adheres to Sections 249 and 250. The Company also agrees that the Order refers to Sections 249 and 250:

So, I think, Mr. Chairman, you know, those four references in the PacifiCorp order. And I would note that the Commission in this order referred specifically to Sections 249 and 250 and that PacifiCorp did not avail itself in the past of Sections 249 and 250 for **dollar-for-dollar cost recovery** of its excess net power costs reemphasizes what I stated in my summary and also in responding to questions that we were sent a strong signal by the Commission that if we wanted on a prospective basis to collect excess net power costs on a going-forward basis that we ought to avail ourselves of that opportunity. And I can tell you that that's why we are here today in front of you is to avail ourselves and seek a power cost adjustment mechanism so that it will track with our costs.

Transcript p. 634-635(emphasis added).

The Company obviously did not read the Order literally and misconstrued any signal the Commission sent to it in Docket Number 20000-ER-02-184. The Commission certainly did not order or send any signals to the Company that it should file this particular PCAM, which is not on a dollar for dollar basis, includes items other than the wholesale commodity and employs sharing bands, all clearly contrary to Sections 249 and 250. The Commission must consider this application under another Commission rule, Wyoming Statute or dismiss the application as being beyond the Commission's authority to grant the relief requested.

II. The Commission must treat the PCAM as a request for nontraditional rate making pursuant to WYO. STAT. § 37-2-121, or dismiss the application.

The Commission must consider the Company's application a request for nontraditional rate making since the Commission cannot grant the application pursuant to Sections 249 and 250, and in light of the Company's actions:

On November 4, 2003, PacifiCorp filed tariff sheets with a transmittal letter which stated, “. . . Company proposal may fall within the scope of W.S. 37-2-121 as a non-traditional ratemaking approach. Given the Commission’s broad authority to implement various ratemaking tools, it is the Company’s hope that attention would be directed in this proceeding at the elements of the proposal itself rather than on whether or not it fits neatly within the scope of a particular rule.”

Commission Composite Exhibit 1, Item 1, p. 1.

Yet, the Company, after effectively amending its application to include nontraditional ratemaking specifically states in its rebuttal, “PacifiCorp’s PCAM application is not directed at alternative regulation.” PPL Exhibit 6, p. 14. Thankfully, the Commission has already ruled that this application is an application for nontraditional ratemaking, “[t]aken together, the surcharge and deferral components of the PCAM can be described as an “innovative, incentive or nontraditional” rate making method under W.S. § 37-2-121 and other applicable Wyoming utility statutes.” Commission Composite Exhibit 1, Item 1, p. 6.

Since the Commission has determined this application is a request for nontraditional ratemaking it is important that the Commission consider the requirements of WYO. STAT. § 37-2-121. The statute reads in pertinent part:

. . . Any public utility may apply to the commission for its consent to use innovative, incentive or nontraditional rate making methods. In conducting any investigation and holding any hearing in response thereto, the commission may consider and approve proposals which include any rate, service regulation, rate setting concept, economic development rate, service concept, nondiscriminatory revenue sharing or profit-sharing form of regulation and policy, including policies for the encouragement of the development of public utility infrastructure, services, facilities or plant within the state, which can be shown by **substantial evidence to support and be consistent with the public interest.**

WYO. STAT. § 37-2-121(emphasis added).

The Company must demonstrate by substantial evidence to the Commission that its PCAM is in the public interest. Substantial evidence means, “evidence which a reasoning mind would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.” BLACK’S

LAW DICTIONARY 1428 (6th ed. 1990). In addition, there are at least four proposals for nontraditional ratemaking from the intervening parties that the Commission must consider. Though the OCA continues to advocate for denial of this application completely, OCA will demonstrate that any one of its options is more consistent with the public interest and a much better alternative form of ratemaking than the PCAM proposed by PacifiCorp.

III. PacifiCorp did not demonstrate by substantial evidence that the PCAM supports and is consistent with the public interest as required by WYO. STAT. § 37-2-121.

A. PacifiCorp is not like other utilities in Wyoming.

The Company is a vertical intergraded utility and not similar to other utilities in the state of Wyoming. The Company explains in its rebuttal testimony that it just wants to be treated like everyone else. PPL Exhibit 8 p. 2. However, a few pages later the Company has a heading in its rebuttal testimony entitled, "The Rules Should be Different for Utilities with Owned Generation." PPL Exhibit 8 p. 7. In his rebuttal testimony PacifiCorp witness Widmer agrees that the Company is different. Transcript p. 454.

The only electric utility company providing service in Wyoming remotely resembling PacifiCorp is Black Hills Power and Light, as Black Hills owns and operates significant generation assets. The relevant similarities stop with generation, however. Black Hills does not have a pass through mechanism and has never requested one. Further, Black Hills did not request a rate increase during the 2000-2001 energy crisis. OCA witness Parrish emphasized that point in her hearing testimony:

I want to talk for a moment about this issue of PacifiCorp just wanting to be treated like any other company.

Well, they are. And the reason I say that is because what wasn't talked about this morning was Black Hills Power & Light. Black Hills Power & Light is the only other utility that has a substantial portion of its power needs generated by its own -- by itself rather than purchasing it. It's the only other real generator.

The reason I hedge that a little bit is there were a couple of co-ops that have some small hydro plants, something like that, but it's a very small portion of their power needs.

So if we look at PacifiCorp versus Black Hills Power & Light, Black Hills does not have any kind of fuel adjustment mechanism or purchased power adjustment mechanism. They haven't been in for rates since 1995 even though they haven't had this mechanism.

Transcript p. 363-364.

B. Incentives

The OCA contends that the Company's proposed PCAM does not give the Company an appropriate incentive to control costs. Also the shareholder no longer bears the risk and the ratepayer assumes the risk. This is evident in an exchange between the Commission and Mr. Larson regarding Cheyenne Light's alleged lack of incentive to build due to its pass on mechanism:

Q. Okay. Then just one final question. Before lunch here this morning, I don't know whether it was during the initial cross or in your summary, you used a Cheyenne Light, Fuel & Power analysis, and did I hear right that you were saying that their pass-on on a dollar-for-dollar basis gives them no incentive to self-build or build their own generation because they could recover their money quicker right up front with the pass-on?

A. That is my reading with the knowledge that I have about Cheyenne Light & Fuel's pass-through is that if -- that they get dollar-for-dollar recovery of all purchased power expense. My assessment is that, you know, there are a lot of risks inherent in building and, therefore, don't -- I mean, they may see it differently, but I don't see any incentive for them to go out into the capital markets and to subject themselves to the risks as a company if they're getting 100 percent of the cost passed through.

Q. How could you reconcile that, then? With that then allowing the company to have a PCAM, would that then give them a disincentive to build additional of their own generation?

Transcript p. 618.

OCA witness Parrish demonstrated the Company's attempt to shift the burden of risk to the rate ratepayers through an example:

And this is the example where -- it actually starts at page 25 of my testimony and goes for a page or two -- where I wanted to look at the normalized cost from a recent rate case versus the actual cost and see what sort of impact using those historical numbers would have applied.

And what this shows is that the difference between those two amounts was about \$1.70 per megawatt-hour. And it walks through the steps of how much of that would be in the dead band, how much of that would be in the first sharing band, how much would be in the second sharing band.

And the conclusion of this is that of that increase of \$1.70, about 71 percent of it is paid by customers and 29 percent is paid by shareholders. However, of the total power cost -- because remember, most of the power cost is already in base rates -- of that total power cost, 95 percent of it is paid by customers and 5 percent of it is paid by shareholders.

Transcript p. 373 and 374(See also CAS Exhibit 2B).

However, the Company's current method of regulation creates incentives through regulatory lag:

Freezing rates for the period of the lag imposes penalties for inefficiency, excessive conservatism, and wrong guesses, and offers rewards for their opposites; companies can for a time keep the higher profits they reap from a superior performance and have to suffer the losses from a poor one.

OCA Exhibit 2, p. 7.

C. Prudence Review

The Company's proposed PCAM would limit prudence review of short term-balancing transactions. In addition, costs and revenue related to existing contracts and resources that have previously been included in rates would also be exempt. PPL Exhibit 1, pp.10-11.

The OCA is concerned that limiting the Commission's and other interested party's prudence review is detrimental to the public interest:

There appears to be an underlying assumption in proposing this limitation that every new cost, asset, transaction, and contract is reviewed in the case following its appearance or creation. If this were the case, it would

be more reasonable to request that the review be done initially and not revisited case after case. But, the initial premise that new costs are fully reviewed upon their first appearance is not necessarily true. Costs are reviewed on a selective basis, as the interest in a particular item waxes and wanes, and as time permits. If parties did not have the full opportunity to raise issues on matters as those issues rose in importance and interest, or as new information about the particular transaction arose, parties would be unduly prejudiced and the public interest would be compromised.

OCA Exhibit 2, p. 31.

It is unlikely, even if the Commission authorizes this PCAM, that PacifiCorp could keep the Commission from examining whatever it chose. The commission has general and exclusive power to regulate and supervise every public utility within the state. WYO. STAT. § 37-2-112. The Commission also has the option of investigation:

Whenever the commission shall believe that an investigation of any act or omission to act, accomplished or proposed, or an investigation of any rate, service, facility or service regulation of any public utility should be made in order to secure compliance with the provisions of this act and orders of the commission, it may of its own motion summarily investigate the same.

WYO. STAT. § 37-2-117.

The public interest concern arises when the Company keeps other interested parties from investigating items, which would inevitably occur if the Commission adopted the Company's PCAM proposal.

D. Coal Purchase Practices

The OCA requests that the Commission open an investigation pursuant to WYO. STAT. § 37-2-117, regarding the Company's coal purchase practices. In Docket Number 20000-ER-03-198, PacifiCorp's last general rate proceeding, Dr. Sadrul Ula, who appeared as a public witness, raised well founded questions regarding the Company's coal purchase practices and whether or not the Company's coal purchase strategy has resulted in the lowest cost coal supply for the Company's coal fired generation facilities. OCA Exhibit 1, p. 10.

The OCA continues to believe that Dr. Ula's findings are serious and merit further

investigation by the Commission. Implementing the Company's proposed PCAM, or any other PCAM for that matter, before the Commission has satisfied itself that the Company's net power costs are reasonable, would serve only to further solidify the recovery of those potentially unreasonable costs from retail customers on an expedited basis, a result which is obviously in contravention of the public interest. OCA Exhibit 1, p. 11.

IV. OCA Proposals

The OCA continues to advocate that the Commission deny the Company's request to implement its proposed PCAM. However, if the Commission is inclined to adopt some type of PCAM, then the OCA offers three alternatives. The OCA proposals are more aligned with the public interest than the Company's.

The OCA proposes that the Commission allow PacifiCorp to begin deferring net power costs if changes occur that have a significant, negative impact on the totality of the net power costs and those cost changes are caused by outside forces. The second proposal would be to construct in detail a PCAM that would **not** be used on a day-to-day basis, but would only be activated if certain conditions or events occurred. Lastly, the OCA recommends rejecting the Company's proposed PCAM, and implementing a mechanism that contains greater incentives for the Company to control its overall costs and that reasonably shares the risk between customers and shareholders. OCA Exhibit 2 p. 19.

The Company states in its testimony that the reason it has filed this application is due to the disallowance of \$91 million dollar in Docket Number 20000-ER-02-184, and to prevent such a disastrous result in the future. PPL Exhibit 8, p.4. The Western Energy Crisis in 2000-2001, coupled with the Hunter No. 1 Generating Unit is a once in a lifetime event. Furthermore, the Company has provided no evidence to this Commission that it has any reason to expect an energy crisis or a catastrophic generator failure during a period of extraordinary wholesale energy costs. If anything the Company has only demonstrated that it needs the PCAM to avoid the disastrous

events considered in Docket Number 20000-ER-02-184, not for use on a daily basis. Two of the three OCA proposals give the Company specifically what they ask for, a PCAM that is triggered by extreme circumstances. Therefore, the OCA's recommendations are more aligned with the public interest than the Company's proposed PCAM. If the Commission authorizes any mechanism, then the OCA would urge the Commission to adopt a mechanism that is narrowly tailored to address the issue while creating the least potential harm. The OCA recommends denial of this application, however, if any mechanism is adopted the Commission should adopt one of the OCA proposals, which all address PacifiCorp's perceived problem, but do not invite as many, as frequent, or as significant negative side effects.

V. Deferrals

The Company claims throughout the record and in its pre-filed testimony that deferrals do not work based on the outcome of Docket Number 20000-ER-02-184. The Company fails to admit that the denial of \$21 million in deferred power costs was due to its own errors. The Commission found in Docket Number 20000-ER-02-184:

Our October 3, 2001, Order Denying Emergency Motion for Interim Rate Relief in Docket Nos. 20000-EP-01-167 and 20000-ER-00-160, determined that PacifiCorp should not be allowed to immediately begin collecting more than \$21 million in excess deferred power costs as interim or, as PacifiCorp styled it, "emergency," rate relief. After the public hearing on this issue, the Commission declined to establish an "immediate and substantial financial harm" standard for interim relief, but noted "that such harm has not been demonstrated."

IN THE MATTER OF THE APPLICATION OF PACIFICORP FOR AUTHORITY TO INCREASE ITS RETAIL ELECTRIC UTILITY SERVICE RATES IN WYOMING, CONSISTING OF A GENERAL RATE INCREASE OF APPROXIMATELY \$30.7 MILLION PER YEAR, A THREE-YEAR RATE SURCHARGE FOR PREVIOUS POWER COSTS TO RECOVER \$60.3 MILLION, AND AN ADDITIONAL THREE-YEAR RATE SURCHARGE TO RECOVER POWER COSTS OF \$30.705 MILLION RELATED TO THE HUNTER NO. 1 GENERATING UNIT, Docket Number 20000-ER-02-184, Order issued March 6, 2003.

However, as OCA witness Parrish noted in her testimony the Company still uses deferrals frequently and successfully:

Deferrals are used by this company all the time. In fact, there was a report received as part of a compliance filing to this Commission. It was received on February 2nd of this year, and it shows that the company currently has over \$20 million worth of deferrals for miscellaneous items on a Wyoming allocated basis, a hundred million dollars nearly on a total company basis and maybe more than that. It's unclear from the way the report came in. But on a Wyoming allocated basis, this company, without having a power crisis, without having a PCAM, without having a major deferral for power costs, already has \$20 million worth of deferrals for at least 12, 15 different items.

Transcript p.368-369.

The OCA supports denial of this application and the Company's continued successful use of deferrals in appropriate circumstances.

CONCLUSION AND CLOSING STATEMENT

This is a case about a large company that, "just wants to be treated like everyone else." However, the Company does not feel it necessary to abide by the same rules as other Wyoming utilities. Instead the Company asks this Commission to manipulate the PUBLIC SERVICE COMMISSION OF WYOMING PROCEDURAL RULES AND SPECIAL REGULATIONS, Ch. 2, §§ 249 and 250, to fit its PCAM proposal. The Company would like this Commission to ignore that its PCAM application is request for nontraditional ratemaking pursuant to WYO. STAT. § 37-2-121. Finally, the Company would like the Commission to re-litigate Docket Number 20000-ER-02-184, a case that is currently pending in the Wyoming Supreme Court, under the guise that the Commission directed the Company to make the PCAM filing in that docket.

PacifiCorp's PCAM simply cannot be granted in its current form under Section 249 and 250 of the Commission rules. The PCAM is not on a dollar for dollar basis as required by Section 249. Rather, there are sharing bands 85/15 and 95/5, customer and shareholder. The balancing account in Section 250 assures the Company does not over collect or under collect. The only way Section 250 can assure a Company does not over or under collect is if the pass-on is on a dollar for dollar basis. This Commission has never approved a pass on that was not on a dollar for dollar basis.

The Company's proposed PCAM includes items that are not net wholesale power costs. Only net wholesale power costs are passed through to the ratepayer pursuant to Section 249. There is the potential that the band sharing could cause the company to exceed its rate of return. If prices suddenly plummeted then the Company's rate of return would rise because the proposed PCAM is not on a dollar for dollar basis.

Wyoming law is clear that the statutes empowering the Commission must be strictly construed and any reasonable doubt of the existence of any power must be resolved against the exercise thereof. The OCA has given the Commission three reasonable doubts. Sections 249 and 250 are properly promulgated rules and therefore have the force and effect of law. Commission rules are strictly construed. Section 249 is not ambiguous and simply does not allow for the PCAM as proposed by the Company.

Therefore, the Company's PCAM application is a request for nontraditional ratemaking pursuant to WYO. STAT. § 37-2-121. The PCAM was originally filed as a Section 249 application, which as stated above is impossible to grant, and then effectively amended to include WYO. STAT. § 37-2-121. The Company did not demonstrate by substantial evidence that the PCAM supports and is consistent with the public interest as required by WYO. STAT. § 37-2-121. In addition, the Company specifically states in its rebuttal testimony that PacifiCorp's PCAM application is not directed at alternative regulation. If the Commission cannot grant the PCAM pursuant to Sections 249 and 250, and the Company has not met its statutory burden pursuant to WYO. STAT. § 37-2-121, and the Company does not want to consider this application nontraditional ratemaking, then what is the Commission charged with deciding in this case?

The OCA continues to advocate that the Commission deny the Company's request to implement its proposed PCAM or any PCAM. However, if the Commission is inclined to adopt some type of PCAM, then the OCA offers three alternatives. The OCA

proposes that the Commission allow PacifiCorp to begin deferring net power costs if changes occur that have a significant, negative impact on the totality of the net power costs and those cost changes are caused by outside forces. The second proposal would be to construct in detail a PCAM that would not be used on a day-to-day basis, but would only be activated if certain conditions or events occurred. Lastly, the OCA recommends rejecting the Company's proposed PCAM, and implementing a mechanism that contains greater incentives for the Company to control its overall costs and that reasonably shares the risk between customers and shareholders.

If the Commission feels two or more of the OCA proposals are in the public interest, then the Commission is charged with determining which option is most consistent with the public interest. If the Commission doesn't agree with any of the alternatives then the Commission only has the option of denying this application.

The Office of Consumer Advocate respectfully requests that the Commission deny PacifiCorp's Power Cost Adjustment Mechanism because it cannot be granted pursuant to the PUBLIC SERVICE COMMISSION OF WYOMING PROCEDURAL RULES AND SPECIAL REGULATIONS, Ch. 2, §§ 249 and 250. Furthermore, the Company has not met the statutory burden in WYO. STAT. § 37-2-121 to have its PCAM authorized as a form of nontraditional ratemaking. Though, the OCA recommends denial of this application if the Commission is inclined to adopt a PCAM, then the Commission should adopt one of the OCA proposals any of which is more aligned with the public interest than the Company's proposal.

DATED April 12, 2004

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CERTIFICATE OF SERVICE

I, ANTHONY M. REYES, hereby certify that I served, the foregoing Post Hearing Brief, of the Office of Consumer Advocate of the Wyoming Public Service Commission dated April 12, 2004, by hand delivery, and by mailing a true and correct copy thereof, to the following:

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