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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 380

In the Matter of a Rulemaking Proceeding to)
Implement Senate Bill 1149 Related to) ORDER
Electric Restructuring.)

**DISPOSITION: APPLICATION FOR RECONSIDERATION DENIED/
PETITION FOR AMENDMENT OF RULE DENIED**

On November 27, 2000, PacifiCorp filed an application for reconsideration of Order No. 00-596, issued September 28, 2000. The application seeks an order from the Commission amending OAR 860-038-0080(7) to remove the time limitation it contains (October 1, 2001, through December 31, 2002).

On December 19, 2000, PUC Staff filed a response opposing the application for reconsideration.

DISCUSSION

Procedure

The Commission notes that PacifiCorp's filing is for "reconsideration" of our Order No. 00-596 under ORS 756.561 and OAR 860-014-0095. That order was issued in a rule proceeding, AR 380. PacifiCorp is asking for an amendment of one of the rules we adopted in that proceeding.

An application for "reconsideration" is not the appropriate vehicle for requesting the amendment of a rule that has been adopted by an agency. *See Pacific Northwest Bell Telephone Company v. Eachus*, 107 Or App 539, 813 P2d 46 (1991). We will therefore deny the application for reconsideration.

ORS 183.390 provides a method for an interested person to petition an agency for the promulgation, amendment, or repeal of a rule. It requires that the petition be in the form prescribed in a rule promulgated by the Attorney General (Uniform Rule 137-001-0070). PacifiCorp does not call its request a petition for amendment of a rule. It does, however, contain the information required by that rule, including a detailed statement of the facts and arguments involved, the effect of the amendment, propositions of law, and precise wording of the proposed amendment. It thus provides a sound basis for our consideration of this matter. In the interests of efficiency, we will consider PacifiCorp's petition as a petition for amendment of a rule under ORS 183.390 and respond accordingly.

Substantive Issues

Order No. 00-596 adopts OAR 860-038-0080 (Resource Policies and Plans), among other rules. This rule establishes the general policies the Commission will follow with respect to the generating resources held by electric companies and the procedures for implementing the policies. Subsection (7) of the rule provides a method for determining transition charges and credits for a "multi-state electric company" such as PacifiCorp. It is intended to protect PacifiCorp from having to pay transition credits for revenues from generation resources if another state in which PacifiCorp operates has credited revenues from those generation resources to PacifiCorp's revenue requirement. The protection established by the rule ends on December 31, 2002.

PacifiCorp asks that the December 31, 2002, ending date for this provision be removed. It argues, first, that its acquiescence to the rule was part of a comprehensive agreement among many parties (called the "Coalition"). PacifiCorp's support for the agreement was based on the Commission's adoption of the agreement as a whole. The Commission, however, postponed action on one of the rules agreed to by the Coalition, the administrative valuation rule (proposed OAR 860-038-0120), to seek legal advice. According to PacifiCorp, these developments have made it likely that the operation of the rules will be different from what PacifiCorp had contemplated when it entered into the agreement. PacifiCorp thus argues that the Commission should not now bind PacifiCorp to "the part of the comprehensive agreement that was most disadvantageous to the Company."

PacifiCorp also notes that the time limit in the rule in question was designed to give the Company an incentive to aggressively pursue resolution of interjurisdictional cost allocation issues. It asserts that it has done so and that the justification for the time limit has therefore ended. According to PacifiCorp, the time limit will now "be counter productive to a timely resolution of interjurisdictional issues."

PacifiCorp's final argument is that factors beyond its control make it uncertain as to when the Company will be able to implement its resource plan (implementation of the resource plan would end the use of the ongoing valuation process and thus make moot the deadline in question). According to PacifiCorp, the April 1, 2001, goal for approval of the resource plan and the time required for valuation and sale of the resources leaves no allowance for time required to gain the concurrence of PacifiCorp's other jurisdictions as to the resource plan and sales of resources. Moreover, according to the Company, certain recent events have made it even less likely that PacifiCorp will be able to adopt its resource plan by that date. These include the delay in adoption of rules for valuation, the opening of a docket to review the dividing line between large and small nonresidential customers, a proposal by one party in that docket to delay implementation of direct access for smaller nonresidential customers, and a proposal by another party to initiate a proceeding on SB 1149 implementation costs.

Staff's Position

Staff argues that PacifiCorp's request is premature. It notes, first, that the ultimate fate of the administrative valuation rule is uncertain. The Commission has expressed support for the Coalition's proposed rule and a willingness to support legislative changes necessary to adopt the Coalition version. Second, Staff argues that PacifiCorp's efforts to resolve the interjurisdictional issues do not justify a permanent "hold-harmless" provision. Finally, Staff argues that the likely delays in PacifiCorp's development of its resource plan should not affect the Company's interjurisdictional problems and the allocation of its resources.

COMMISSION DISPOSITION

We will not grant PacifiCorp's request for amendment of the rule. The problems the Company notes do not suggest that the rule in question should be amended now. We will adopt an administrative valuation rule soon. We are hopeful that it will have the support of the parties to this proceeding, including PacifiCorp. Until that adoption occurs, PacifiCorp should not assume that the rule will be unacceptable to it. We agree with Staff that the fact that discussions are still ongoing between PacifiCorp and its jurisdictional states is not a reason for amending the rule. Moreover, the possible delay in PacifiCorp's development of its resource plan is not a sound basis for removing the termination date of the "hold-harmless" provision. We note, also, that the termination date of that provision is two years away. The ultimate unraveling of the complex set of issues noted in PacifiCorp's application and Staff's response will make matters more clear as time goes on.

CONCLUSION

PacifiCorp's request for reconsideration should be denied because it is not the appropriate vehicle for requesting amendment of a rule.

PacifiCorp's request for amendment of the rule under ORS 183.390 is denied for the reasons set out in this order.

ORDER

IT IS ORDERED that:

1. The application for reconsideration of OAR 860-038-0080 filed by PacifiCorp is denied.
2. The petition for amendment of OAR 860-038-0080 is denied.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may appeal this order pursuant to ORS 756.580.