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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 390

In the Matter of a Proposed Rulemaking to)	
Implement the Code of Conduct, Aggregation,)	ORDER
and Allocation of Funds to Education Service)	
District Provisions of SB 1149.)	

DISPOSITION: PETITION DENIED

On December 18, 2000, the Public Utility Commission (Commission) adopted rules, including code of conduct rules¹, pursuant to the requirements of SB 1149. *See* Order No. 01-073, dated January 3, 2001. The rules were filed with the Secretary of State on January 5, 2001.

On December 29, 2000, Portland General Electric Company (PGE) filed a petition requesting that the effective date of the code of conduct rules be changed from January 1, 2001 to June 1, 2001. On January 2, 2001, PGE submitted a letter clarifying its petition, asking that the petition also be considered as a request under OAR 860-014-0093 for additional time to comply with the code of conduct rules.

The petition and letter were served on the members of the AR 390 service list. Participants were given until January 17, 2001 to respond. Staff filed a response on January 17, 2001. PacifiCorp filed a response, along with a request to join PGE's petition, on January 18, 2001.

The Commission declined to change the effective date of the code of conduct rules as evidenced by the filing of the rules with the Secretary of State. The issue before the Commission is whether PGE and PacifiCorp should be granted additional time in which to comply with the requirements of the code of conduct.

PGE's Position

¹ Rules regarding the code of conduct are found in OAR 860-038-0500 through OAR 860-038-0640.

PGE contends that it is not necessary for these rules to be in effect now, and questions their relationship to the current affiliated interest standards that were previously adopted by the Commission. PGE believes amendments need to be made to the rules and requests more time to comply with them.

PacifiCorp's Position

PacifiCorp supports the petition for additional time to comply for several reasons. PacifiCorp believes that the utilities need more time to investigate the effects of the code of conduct rules on utility operations. It claims that the utilities have not had sufficient time to implement the processes necessary for compliance with the new rules. PacifiCorp also contends that utilities would not use the additional time to take actions violative of the code, because such actions would only result in stricter rules and a hostile regulatory environment.

Staff's Position

Staff does not support the petition. In its response, Staff states that the language of SB 1149 reflects the legislative intent to have "final" code of conduct rules in place and in effect on January 1, 2001. Staff points out that the purpose of the code of conduct is to prevent cross-subsidization and avoid potential market power abuses "both during the transition to and after the introduction of competition." Staff's response, page 3, line 5-6, quoting OAR 860-038-0500. Staff further claims that the participants had adequate notice of the code of conduct rules, and that amendments to the rules should be based on operational experience. Finally, Staff disputes PGE's claim that there is some relationship or conflict between current affiliated interest rules and code of conduct rules.

Discussion

PGE and PacifiCorp are asking for additional time in which to comply with the code of conduct rules. We understand that many issues and processes have to be worked out in a relatively short time frame due to the October 1, 2001 implementation date for electric restructuring. However, we are not willing to grant the utilities' request for more time to comply with the rules.

The code of conduct rules, initially proposed in August 2000, were not acceptable to PGE and PacifiCorp. Although workshops were held in September and October, the participants were not able to reach resolution on the entire code of conduct. What we adopted on December 18, 2000, was not substantively different from the rules submitted in October 2000.² The utilities, therefore, were on notice as to what would be required of them at least two months before the January 1, 2001 implementation date.

² The Transmission and Distribution Access rule (OAR 860-08-0590) was removed for future consideration.

More importantly, however, is that these rules cover activities which will occur prior to the October 1, 2001 implementation of direct access. Issues of cross-subsidization and joint marketing, to name but two, will arise prior to October 1, 2001. While we hope that the utilities would never take actions violative of the code of conduct as expressed by PacifiCorp, without a code in place we do not have the ability to take any enforcement action.

The legislature also had this in mind when it required that we adopt a code of conduct by January 1, 2001. Specifically, SB 1149 required that we adopt a code of conduct for electric companies and their affiliates to protect against anticompetitive practices and market abuses. Since these practices and abuses could occur prior to October 1, 2001, we must implement the code of conduct during the transition period.

As this discussion is dispositive of the petition, we need not address the other issues raised. We add that, if the time comes when the content of the rules needs to be changed, PGE, PacifiCorp, Staff, or any other interested person may petition the Commission for an amendment of the rules pursuant to ORS 183.390.

ORDER

IT IS ORDERED that the petition for additional time to comply with the code of conduct rules set forth in OAR 860-038-0500 *et al*, is denied.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to

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the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.