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December 21, 2007

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***


Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
Salem, OR 97310-2551

Attn: Vikie Bailey-Goggins
Administrator, Regulatory Operations

RE: DR 38- In the Matter of PACIFICORP and HCA MANAGEMENT COMPANY
Joint Petition for Declaratory Ruling

PacifiCorp (d.b.a. Pacific Power) hereby submits for filing its Reply to the Petition to Intervene; Motion to Dismiss; Motion for Reconsideration or Rehearing; Motion to Stay Enforcement of Order of Myra Lynne Homeowners Association and Gary Walters for Oregon Public Utility Commission Docket No. DR 38.

Very truly yours,


Andrea L. Kelly
Vice President, Regulation

Enclosure

cc: DR 38 Service List

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DR-38

In the Matter of

PACIFIC POWER, dba PACIFIC POWER
& LIGHT COMPANY, and

HCA MANAGEMENT COMPANY, LLC

REPLY OF PACIFIC POWER TO THE
PETITION TO INTERVENE; MOTION
TO DISMISS; MOTION FOR
RECONSIDERATION OR REHEARING;
MOTION TO STAY ENFORCEMENT
OF ORDER OF MYRA LYNNE
HOMEOWNERS ASSOCIATION AND
GARY WALTERS

I. INTRODUCTION

Pursuant to OAR 860-013-0035, PacifiCorp, d.b.a. Pacific Power (“Pacific Power”), hereby submits its Reply to Myra Lynne Homeowners Association (“MLHA”) and Gary Walters’ (collectively “Movants”) Petition to Intervene; Motion to Dismiss; Motion for Reconsideration or Rehearing; and Motion to Stay Enforcement of Order (“Petition to Intervene and Motions”) filed on December 11, 2007.

II. REPLY

A. Response to Petition to Intervene.

Movants raise several arguments in support of the Petition to Intervene, none of which should be used a basis for granting their untimely intervention.

Movants argue that the Oregon Public Utility Commission’s (“Commission”) Order (“Order”) in this proceeding incorrectly presumes that all tenants were invited and declined to join the docket. Petition to Intervene and Motions at 2. On May 11, 2007, Administrative Law Judge (“ALJ”) Hayes sent a letter (“ALJ Letter”) to Movants

notifying them of the docket and inviting them to participate. Mr. Walters, president of MLHA, states in his declaration that MLHA's purpose is "to advance the interests and protect the investments of the residents of this park..." Walters Dec. at 1. The ALJ's actions were a courtesy to the Movants, intended to encourage participation. There is no legal requirement to provide notice to the individual tenants. However, if the Commission determines that this is an issue, the Order can be amended to clarify that the ALJ letter was sent to the MLHA and Mr. Walters.

Movants generally argue that the Order violates due process. This is based on an erroneous interpretation of the Order. Movants insist that the Order retroactively applies a portion of its ruling. Movants argue that the Petition for Declaratory Ruling requests that the Commission's ruling be prospectively applied to utility bills as conflicting with the Order's statement that "prior to the time HB 2247 became effective..." Petition to Intervene and Motions at 5. Movants are apparently referring to Stipulated Issue 1. Stipulated Issue 1 requests verification of HCA's electric utility billing practices. Stipulated Issue 1 does not seek retroactive relief nor was retroactive relief granted. The Order concludes that HCA was following the correct billing practices prior to the enactment of HB 2247.

Pacific Power notes that HCA sent correspondence dated October 30, 2007, to MLHA regarding HCA's interpretation of the Order and how it affects the amounts HCA may collect from tenants for electricity usage. MLHA disagrees with HCA's interpretation. Pacific Power does not express a position on this issue at this time; however reserves the right to present arguments at a later time, if necessary. However, Pacific Power would not oppose amending the Order regarding the Second Stipulated

Issue to expressly state that the ruling applies to electric billings on a prospective basis as of the date of the order.

ORS 756.525(2) allows for any person to request permission to appear and participate in a proceeding *any time before the final taking of evidence in a proceeding*. (Emphasis added). Given that the Commission entered the Order on October 22, 2007, a petition to intervene filed in December is well beyond the final taking of evidence in this proceeding. ORS 756.525(2) further requires a determination that any intervention would not unreasonably broaden the issues or burden the record. Movants offer nothing to support that their intervention will not unreasonably broaden the issues or burden the record. Further, only a party to the proceeding may challenge that order on rehearing or reconsideration. ORS 756.561. Movants are not a party to this proceeding and therefore have no valid basis for challenging the order now.

However, even though Movants request to intervene is untimely and no valid reason has been offered for allowing the intervention, Pacific Power does not oppose the intervention on the conditions that Movants' participation will not unreasonably broaden the issues or burden the record, consistent ORS 756.525(2), and that the intervention be granted for the limited purpose of amending the order as suggested above.

B. Response to Motion to Dismiss

Movants move to dismiss this proceeding, arguing that HCA is statutorily prohibited from maintaining this proceeding on the basis that HCA is not authorized to conduct business in the state of Oregon. Independent of Movants' assertion, Pacific Power is a legitimate party to this proceeding and could have maintained this action on its own. Any interested person may petition the Commission for a declaratory ruling of the

applicability of any rule or statute enforceable by the Commission. ORS 756.450. The Commission must review and approve all of Pacific Power's conditions for electric service. ORS 757.205(2). The questions presented in this docket relate to conditions for electric service, which are enforceable by the Commission. Therefore, Movants have no valid basis for seeking dismissal of the proceeding.

C. Response to Motion for Rehearing or Reconsideration

Movants' Motion for Reconsideration or Rehearing should be denied. Movants raise no new issues for consideration. Movants criticize the Order for not analyzing the prior version of the Oregon Residential Landlord Tenant Act ("ORTLA"). This criticism is misplaced. Reviewing the law prior to HB 2247 makes no difference in determining the current law.

Ordering Paragraph 1 states:

Prior to the time HB 2247 became effective, Myra Lynne Mobile Home Park, which was receiving service under Schedule 48 from Pacific Power, was required, as a condition of service, to bill each of its submetered tenants for electricity at the Pacific Power Schedule 4 rate.

Order at 10.

Movants attempt to construe this as an improper retroactive application of the current ORTLA when that is not the case. Ordering Paragraph one is in response to Stipulated Issue 1, which deals with Pacific Power's requirements for service, not whether HCA applied ORTLA in calculating its tenants' electric bills. Further, Movants argue that the record supports, and the parties intended to seek, a prospective ruling. Petition to Intervene and Motions p. 7. Prospective application of a ruling should be based on current law.

Movants aver that the record lacks information for the Commission to determine “the correctness” of HCA’s practices prior to 2006. Movants seem to be under the impression that the Commission is deciding whether HCA Management correctly tallied the tenants’ electric bills. The Petition for Declaratory Ruling did not ask the Commission to assess the validity of the charges to the tenants and the Commission did not undertake such an analysis. The Commission merely concluded that HCA correctly followed Pacific Power’s requirements for service.

Further, Movants argue that the Order allows for HCA Management to “profit” from tenants’ electric bills in violation of HB 2247. The Commission already thoroughly considered the statutory construction arguments, including those regarding “profit” and addressed them correctly in the order. Movants raise no valid reason to revisit these arguments.

Movants provide no valid basis for rehearing or reconsideration. Movants either misinterpret the Order or present arguments already thoroughly briefed and considered by the Commission. As such, the Motion for Reconsideration or Rehearing should be denied.

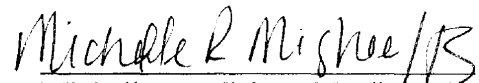
D. Conclusion

For the foregoing reasons, Pacific Power would not oppose granting the Petition to Intervene for the limited purpose of entering an amendatory order to make the two changes as suggested above. If the Commission determines that referring to “tenants” in the second paragraph of the first page of the order could be an issue, the Order can be amended to clarify that the ALJ Letter was sent to the MLHA and Mr. Walters. Additionally, the Commission could include in Ordering Paragraph 2 an express

statement it should be applied only on a prospective basis. The Commission should deny all other motions.

DATED: December 21, 2007.

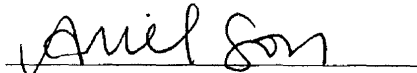
Respectfully submitted,


Michelle R. Mishoe OSB# 07242
Legal Counsel
Pacific Power

CERTIFICATE OF SERVICE

I certify that I have caused to be served the foregoing document in Oregon Public Utility Commission Docket No. DR 38 by electronic mail and first class mail to the parties on the attached service list.

DATED this 21st day of December, 2007.



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