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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UE 111

In the Matter of the Revised Tariff )  
Schedules Applicable to Electric Service ) ORDER  
Filed by PacifiCorp. )

DISPOSITION: MOTION FOR SUMMARY DISPOSITION TO BE HELD  
IN ABEYANCE PENDING SUPPLEMENTAL FILING

**SUMMARY**

On January 7, 2000, the Citizens' Utility Board (CUB) filed a Motion for Summary Disposition of PacifiCorp's rate case in docket UE 111. CUB contends that the filing is inconsistent with the company's distribution-only alternative form of regulation (AFOR) and should be dismissed.

On January 24, 2000, three parties filed a response to CUB's motion. The Industrial Customers of Northwest Utilities (ICNU) agrees that PacifiCorp's filing violates the AFOR and recommends the Commission grant CUB's motion. Staff agrees that PacifiCorp's filing is deficient, but believes that the company can cure the defects by filing supplemental testimony and extending the suspension period. PacifiCorp opposes CUB's motion. It contends that CUB has not satisfied the standards for summary disposition and that its rate case complies with the purpose and the terms of the AFOR.<sup>1</sup>

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<sup>1</sup> On February 10, 2000, PacifiCorp filed a motion for leave to file a supplemental response in opposition to CUB's motion. A supplemental response to a motion is not contemplated by the Commission's administrative rules. See OAR 860-013-0050. More importantly, the opportunity to file a supplemental response to CUB's motion to dismiss was not included in the procedural schedule adopted in this matter. In fact, at PacifiCorp's request, the schedule established an expedited process requiring a Commission order resolving the matter by February 16, 2000.

On the advice of the administrative law judge assigned to this docket, we have not read PacifiCorp's motion for leave. Nonetheless, given the timing of the request, we do not believe that PacifiCorp should be allowed the opportunity to file a supplemental response. While PacifiCorp may be willing to extend the date now set for resolution of CUB's motion, the February 16<sup>th</sup> decision date was established based on the agreement of all parties. Accordingly, we deny PacifiCorp's motion, and rely on no part of it in rendering this decision.

For the reasons that follow, we find that PacifiCorp's rate application, as filed, is inconsistent with the distribution-only AFOR. We are unwilling, however, to grant CUB's motion for summary disposition without providing PacifiCorp the opportunity to amend its filing to correct the deficiencies. Accordingly, in this order, we offer PacifiCorp the option to cure its application by:

- filing supplemental testimony, by March 1, 2000, that develops costs and revenues separately for its generation, transmission and distribution functions; and
- agreeing to extend the suspension period, now set to expire on September 6, 2000, for a two-month period.

If PacifiCorp declines these two requests, we will grant CUB's motion for summary disposition.

### FINDINGS

The Commission approved a distribution-only AFOR for PacifiCorp in docket UE 94, Order No. 98-191. Among other things, the AFOR allows the company to implement annual price adjustments for its distribution function, but limits increases to changes in the GDP price index minus a productivity factor. Under the plan, distribution rate increases are capped at 2 percent for any one year, and restricted to a total of 5 percent over the term of the plan.

Since the plan took effect, PacifiCorp has filed for and received three price changes for its distribution function. Because the AFOR did not unbundle PacifiCorp's rates by function, Staff and PacifiCorp agreed that, for purposes of implementing the price changes, the company should assign 29.88 percent of its revenue requirement to distribution, and the balance to generation and transmission. Under this methodology, the distribution price changes were calculated by multiplying changes in the price index by 29.88 percent of PacifiCorp's overall revenue requirement.

The AFOR contained no language prohibiting PacifiCorp from filing a rate case for the transmission and generation functions not covered by the AFOR. In fact, in offering PacifiCorp a distribution-only AFOR based on a proposal by the company, CUB and other parties (Joint Parties), the Commission noted:

Because the generation and transmission function would remain regulated under traditional regulation, the Joint Parties explain that *the earnings band would not impact PacifiCorp's nor the Commission's ability to initiate a rate-case for those functions*. Draft Order, UE 94, issued January 15, 1998, page 4. (emphasis added).

On November 5, 1999, PacifiCorp filed Advice No. 99-010, an application for a general increase in revenues from Oregon operations. The filing seeks an immediate increase in revenues of \$61.8 million related to the company's generation and transmission functions. It also seeks an additional increase of \$26.4 million effective at the end of the AFOR for its distribution function. In its trial brief accompanying the application, PacifiCorp contends that the filing is consistent with the AFOR. The company first describes the AFOR as a mechanism to establish prices for approximately 30 percent of the company's revenues. It then explains:

The present filing is consistent with the AFOR. The Company is requesting an immediate rate increase for the portion of revenues that are not subject to the AFOR. Approximately 70 percent of the authorized revenue requirement increase will be applied to prices and the resulting revenue requirement will be functionalized as described above. When the AFOR expires [on June 30, 2001], the remainder of the authorized revenue requirement increase will be applied to prices, and concurrent with each price change, total revenues will be functionalized. Trial Brief at 5.

## CONCLUSIONS OF LAW

### Preliminary Issue

At the outset, PacifiCorp contends that CUB's motion has not met the standards for summary disposition. Noting that such standards are stringent, it argues that CUB failed to establish any factual record upon which the Commission could resolve any issue of fact in CUB's favor. Because the Commission cannot grant CUB's motion without resort to disputable facts, PacifiCorp maintains that CUB's motion is incomplete and must be denied.

PacifiCorp is correct that the standards for summary judgment are not easily met. In determining whether to grant a motion for summary disposition, we must view the evidence and the record in the light most favorable to the adverse party. Summary disposition is proper only when there is no genuine issue of material fact, and it is certain that no reasonably objective fact finder could find in favor of the adverse party on the issues that are subject of the motion. ORCP 47; *PGE v. Oregon Energy Co.*, Order No. 98-238.

Due to these requirements, motions for summary judgment generally include supporting affidavits designed to eliminate any factual disputes. In this case, however, CUB chose to seek summary disposition based solely on the rate application itself. In other words, it has accepted the facts as asserted in PacifiCorp's filing. As explained in its motion, CUB's request for summary disposition is made on the basis of PacifiCorp's application, the AFOR, and a limited number of documents relating to UE 94 and the implementation of the AFOR. Consequently, there are no

material issues of fact in dispute, and PacifiCorp's preliminary challenge to CUB's motion is denied.

### **Positions of the Parties**

CUB makes numerous arguments that PacifiCorp's filing is inconsistent with the AFOR. ICNU agrees and adopts CUB's arguments. CUB contends that, although presented as a generation and transmission filing, PacifiCorp's rate application also seeks to increase rates for its distribution function. CUB primarily faults the structure of PacifiCorp's filing. It points out that, in an attempt to comply with the AFOR, PacifiCorp relies on the 70/30 assignment of revenues used to implement distribution price changes under the AFOR. Based on this reliance, PacifiCorp limits its request for an immediate rate increase to only 70 percent in overall revenue requirement it believes it could justify.

CUB contends, however, that PacifiCorp's 70/30 assignment of revenues fails to recognize that the AFOR applies to the distribution function, not to a 30 percent slice of the company's revenues. According to CUB, PacifiCorp's filing really asks for an initial rate increase for 70 percent of each function, including distribution. CUB argues that PacifiCorp should have instead filed a rate case that sets out revenue requirements functionalized to generation and transmission.

PacifiCorp responds that its filing is proper and that CUB's motion should be denied. PacifiCorp contends that its filing seeks an increase in generation and transmission related rates only and excludes the percentage of its costs, 29.88 percent, that the Commission has deemed to be related to its distribution function. Because the present filing uses this 70/30 revenue split to exclude its distribution function, PacifiCorp argues that its rate application is consistent with the policy underpinning the AFOR.

Staff agrees with CUB that the AFOR applies to PacifiCorp's distribution function, not a specific percentage of the company's revenues. It also agrees that the company's filing is deficient because it fails to demonstrate that the requested rate change is related solely to generation and transmission. Staff, however, does not believe that these facts warrant dismissal of the filing. Staff believes that PacifiCorp should be given the opportunity to cure the application by filing supplemental testimony and agreeing to extend the statutory suspension period.

### **Discussion**

As noted above, nothing in the AFOR prohibits PacifiCorp from filing a rate case limited to the company's generation and transmission functions. The dispositive issue, therefore, is whether the company's request for an initial rate increase in this docket is restricted to those components.

PacifiCorp contends that it has isolated these functions by using a 70/30 division of revenues based, in part, on the methodology used to implement index-related price increases under the AFOR.

PacifiCorp fails to recognize, however, the separate methods by which the company must pursue rate increases for different functions. The AFOR expressly allows the company to implement annual price adjustments for its distribution function. These adjustments are based solely on changes to inflation minus a productivity factor. PacifiCorp can, essentially, implement these changes automatically by filing tariff revisions. Because the AFOR did not unbundle the company's costs and rates by function, the Commission has calculated these increases based on a 70/30 division of revenues.

This methodology, however, does not apply to PacifiCorp's generation and transmission functions, which remain subject to standard cost-of-service regulation. In a rate case filing for these functions, PacifiCorp must establish that the revenue increase it is seeking is related solely to generation and transmission, and not distribution. Its attempt to simply discount an overall revenue requirement by 30 percent fails to recognize that the AFOR applies to the distribution function, not a percentage of its revenues. Therefore, we agree with CUB that PacifiCorp's request, as filed, is essentially a rate increase request for each function, including distribution, equal to 70 percent of what it believes it can justify.

Based on this finding, we conclude that PacifiCorp's application is contrary to the terms of the AFOR. This Commission cannot examine the need for any revenue increase for generation and transmission functions because the filing fails to identify either (a) current generation and transmission revenues, or (b) functionalized generation and transmission costs. Due to these deficiencies, PacifiCorp's application, as filed, is subject to summary disposition. ORCP 47C.

We are unwilling to grant CUB's motion, however, without first affording PacifiCorp the opportunity to cure its filing. In agency practice, pleadings are easily amended and deficiencies may generally be corrected during the course of the proceeding. The primary consideration is whether other parties to the proceeding are prejudiced by the amendment.

As an alternative to granting summary disposition, we adopt Staff's recommendation that PacifiCorp be allowed to amend its filing to correct the defects identified above. As Staff explains, PacifiCorp's failure to set out revenue requirements by function effectively puts Staff and intervenors in the position of going first. Parties other than the company must provide a functional analysis to properly respond to PacifiCorp's request. To correct this, PacifiCorp should file supplemental testimony that sets out the increase the company is seeking by function.

To ensure that the supplemental filing does not prejudice the other parties, PacifiCorp must also be willing to extend the suspension period by two months and to work with the parties to establish a

new schedule. While some review of the filing has already occurred, any supplemental filing will provide new information that must be examined. To ensure that this Commission and the parties to the docket have adequate time for that examination, PacifiCorp should extend the current suspension period by two months.

Accordingly, we provide PacifiCorp the opportunity to amend its application for a general rate revision. PacifiCorp may cure its application by: (1) filing supplemental testimony, on or before March 1, 2000, that develops costs and revenues for generation and transmission functions separately; and (2) agreeing to extend the suspension period to November 6, 2000. If PacifiCorp accepts this offer, it should notify the Commission and other parties within three business days from the service date of this order. Upon notification, the Commission will schedule another prehearing conference after the parties have had a chance to review the filing to establish a new schedule. If PacifiCorp refuses to file supplemental testimony and extend the suspension period, we will issue an order granting summary disposition.

In reaching this decision, we acknowledge that a supplemental filing by PacifiCorp may not resolve all issues raised by CUB in its motion for summary disposition. These other issues, for example, include the relationship of any proposed changes in the company's authorized return on equity (ROE) and capital structure and the earnings band contained in the AFOR. CUB also questions the propriety of PacifiCorp's proposed increase to the fixed monthly basic charge. However, if PacifiCorp agrees to amend its filing, we do not believe that these issues justify the summary disposition of PacifiCorp's filing. Issues related to the proper separation of the company, its rates, and its services raise factual questions that may be addressed during the hearings in this proceeding.

## **ORDER**

IT IS ORDERED that:

1. The rate application filed by PacifiCorp is deficient and subject to summary disposition.
2. PacifiCorp may correct the deficiencies in its application by filing supplemental testimony, on or before March 1, 2000, that develops costs and revenues separately for its generation, transmission, and distribution functions, and by agreeing to extend the statutory suspension period until November 6, 2000.
3. PacifiCorp shall notify the Commission and other parties of its decision within three business days from the service date of this order.

4. The motion for summary disposition, filed by the Citizen's Utility Board, is held in abeyance pending notification from PacifiCorp as to whether it accepts the Commission's offer.
5. If PacifiCorp declines the offer presented in this order, the Commission will issue an order granting the Citizens' Utility Board's Motion for Summary Disposition. If PacifiCorp accepts the Commission's offer, the Commission will issue an order denying the Citizens' Utility Board's motion following a review of PacifiCorp's filing.

Made, entered, and effective \_\_\_\_\_.

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**Ron Eachus**  
Chairman

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**Roger Hamilton**  
Commissioner

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**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 OAR 860-14-095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-13-070. A party may appeal this order to a court pursuant to ORS 756.580.