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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 TO STRIKE DENIED;
MOTION TO DISMISS DENIED

Introduction

On January 7, 2000, the Industrial Customers of Northwest Utilities (ICNU) filed a motion to dismiss PacifiCorp’s general rate filing. ICNU contends that the filing should be dismissed because the rate filing incorrectly utilizes a historic test year period that is based on flawed data. ICNU maintains that, because of PacifiCorp’s flawed test year data, the Commission cannot establish that the proposed rates are fair and reasonable as required by ORS 756.040(1).

On January 12, 2000, PacifiCorp filed a motion to strike ICNU’s motion to dismiss. PacifiCorp argues that ICNU’s motion to dismiss is untimely under Commission rules, was not contemplated by the procedural schedule, and prejudices the other parties in this docket. It also contends that ICNU failed to seek an extension for the late filing, and has offered no explanation for waiting over two months from the filing of the rate case to file the motion to dismiss.

On January 26, 2000, ICNU filed a response to PacifiCorp’s motion to strike. ICNU contends that PacifiCorp’s motion to strike is defective and should be denied.

Discussion

Both PacifiCorp and ICNU make various technical arguments relating to the appropriateness of ICNU’s motion to dismiss. PacifiCorp primarily contends that the motion was not timely filed under OAR 860-0013-0050(3), which provides that a “motion against a complaint, application, or petition shall be filed within 20 days of service.” Because PacifiCorp filed its application for a general rate increase on November 5, 1999, the company maintains that ICNU’s motion should have been filed by November 29, 1999. PacifiCorp notes that ICNU made no

attempt to seek an extension permitting it to file the motion at a later date. PacifiCorp also contends that ICNU's late filing places unacceptable pressures on and prejudices the other parties to UE 111 under the current procedural schedule. For these reasons, PacifiCorp contends that the Commission should strike the motion as untimely.

In defense of its motion, ICNU contends that PacifiCorp's motion to strike is deficient by failing to comply with the Oregon Rules of Civil Procedure (ORCP). ICNU also claims that its motion is not subject to the time limits in OAR 860-013-0050(3), asserting that it may challenge PacifiCorp's filing at any time during the proceeding. Alternatively, if OAR 860-013-0050(3) does apply, ICNU argues that the 20-day time period did not begin to run until it became a party to the proceeding. It disputes PacifiCorp's claim that the motion prejudices the other parties to the case, and argues that equitable principles require that the Commission deny PacifiCorp's motion to strike.

Resolution

The Commission's administrative rules are designed to ensure that proceedings are conducted in an orderly and efficient manner. These rules provide an important framework to assist this Commission to secure the just and appropriate determination of every action. Especially in rate cases, parties should make every effort to follow the rules to ensure that our review of the application is completed within the limited suspension periods permitted by statute.

The Commission is reluctant, however, to strike a motion based on an alleged technical deficiency. In administrative proceedings, pleadings are liberally construed and easily amended. In this case, the Commission could reasonably construe ICNU's filing as a motion for failure to state a claim under ORCP 21(A)(8), or a motion for summary judgment under ORCP 47(B). With either characterization, ICNU's right to file such an objection is unlimited and may be done at any time during the proceeding. For that reason, the Commission declines to grant PacifiCorp's motion to strike.

The Commission further concludes, however, that ICNU's motion to dismiss should be denied on its merits. Nothing in the substance of ICNU's arguments convinces us that PacifiCorp's use of an historic test year warrants the summary disposition of its application. ICNU makes several arguments that rates should be based on a future test year. These arguments, however, simply raise questions as to the appropriateness of PacifiCorp's proposed test year, and fail to establish that the inclusion of a historic test year invalidates the filing.

As ICNU's arguments in its motion demonstrate, the selection of an appropriate test year to establish rates is a frequently litigated issue in regulatory proceedings. While we have favored the use of future test years in recent cases for electric utilities, we have also used historical test years,

two-year test periods, and a combination of future and prior test periods in various cases over the years. *See, e.g., In the Matter of the Application of U S WEST Communications, Inc., for an Increase in Revenues*, Order No. 97-171.¹ The selection of the test period is simply one of several issues that must be resolved to determine the utility's rates.

The Commission rules require only that a utility include a test period in its rate filing. *See* OAR 860-013-0075(1)(c)(D). Nothing prevents PacifiCorp from proposing that the Commission use a historic test year in this proceeding. Because ICNU will be able to challenge PacifiCorp's selection of a 1998 historic test year during the course of this proceeding, we conclude that ICNU's motion to dismiss should be denied.

ORDER

IT IS ORDERED that the Motion to Strike, filed by PacifiCorp, and the Motion to Dismiss, filed by the Industrial Customers of Northwest Utilities, are 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 OAR 860-14-095. A copy of any

¹ In that case, the Commission agreed to use a combination of nine-months of recorded results and three months of estimated results to obtain an annualized test year.

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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.