

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 111

In the Matter of the Revised Tariff Schedules in)
Oregon filed by PACIFICORP, dba Pacific) ORDER
Power and Light Company.)

DISPOSITION: PETITION TO INTERVENE DENIED

Introduction

On July 10, 2000, Biomass One L.P. (Biomass One) filed a petition to intervene out of time in this proceeding. Biomass owns and operates a 25,000 kilowatt qualifying facility (QF) in White City, Oregon. PacifiCorp purchases the entire output of Biomass's QF pursuant to the terms of a power purchase agreement, the initial term of which expires in 2011.

Biomass One alleges to have an interest in this proceeding because PacifiCorp's normalized results of operations for its rate case included the purchase of power from Biomass One during the test period. Biomass One explains that PacifiCorp has an obligation to its ratepayers to lower its rates by reducing the costs of purchased power, including power it purchases from QFs. Biomass One adds that it recently learned that PacifiCorp reduced its purchased power costs from two QFs by entering into agreements to terminate the underlying contracts. Biomass One notes, however, that PacifiCorp did not pursue a similar strategy with respect to its power purchase agreement.

As a seller and purchaser of power with PacifiCorp, Biomass One contends that it has an interest in this proceeding. It contends that PacifiCorp's failure to reduce costs by pursuing a buy out of contracts with other QFs is relevant to this proceeding. Biomass One states that it intends to fully participate in the balance of this proceeding, including cross-examining witnesses and submitting briefs. Biomass One maintains that its participation will not unreasonably broaden the issues, unduly burden the record, or delay the proceeding.

On July 27, 2000, PacifiCorp filed an answer against Biomass One's petition to intervene. PacifiCorp first notes that it filed this rate case on November 5, 1999, and that the procedural schedule adopted during the first prehearing conference established a deadline of January 14, 2000 to intervene. PacifiCorp argues that Biomass One has not shown good cause for a late

intervention, adding that extensive proceedings, including settlement discussions, negotiation and submission of stipulations, and the filing of direct testimony, have already occurred in this case.

PacifiCorp also contends that Biomass One's purpose for seeking intervention does not constitute an appropriate interest in this proceeding. Although Biomass One is a customer, PacifiCorp asserts that the only issue Biomass One seeks to pursue relates to its QF contract with PacifiCorp and not its status as a customer. PacifiCorp states that it has, in fact, negotiated with Biomass One for a buy out of its contract, but adds that the negotiations have not yet resulted in an agreement. PacifiCorp believes that Biomass One is seeking intervention in this case—and the threat of a disallowance of purchased power costs—to pressure PacifiCorp into buying out its QF contract.

Certification to Commission

Pursuant to OAR 860-12-035(1)(i), the presiding officer certifies this question to the Commission for consideration and disposition.

Disposition

OAR 860-13-021 sets forth the requirements and standards for petitions to intervene. Subsection (2) of that rule provides:

If the Commission or presiding officer finds that the petitioner has sufficient interest in the proceeding and the petitioner's appearance and participation will not unreasonably broaden the issues, burden the record, or unreasonably delay the proceeding, the Commission or presiding officer shall grant the petition. The Commission, or presiding officer, may impose appropriate conditions upon any intervenor's participation in the proceeding.

The Commission concludes that Biomass One's untimely intervention will unreasonably broaden the issues and burden the proceeding. While ORS 756.525 allows a person to become a party at any time prior to the final taking of evidence, we conclude that Biomass One's late intervention will raise new issues well after the appropriate time to raise them. As PacifiCorp notes, this docket was initiated some eight months ago. Settlement positions were served on all parties to this case and settlement conferences were held in May and June 2000. As a result of those discussions, PacifiCorp and the Commission Staff negotiated two stipulations that have been submitted for Commission consideration. Staff filed its direct testimony on June 12, 2000, and the intervenors filed their direct testimony on July 10, 2000. PacifiCorp recently filed its rebuttal testimony on August 2, 2000, and evidentiary hearings are scheduled to begin next month, on September 7, 2000.

The introduction of issues related to PacifiCorp's efforts to renegotiate its QF contract with Biomass One would undoubtedly raise issues that should have been addressed in discovery, direct testimony, and settlement conferences. As PacifiCorp notes, the time for these activities has passed. Moreover, the introduction of these matters will require the disclosure of confidential data, negotiation strategies and positions related to the negotiations between PacifiCorp and Biomass One. In its answer,

PacifiCorp states that it will vigorously oppose any attempt of Biomass One to use its status as a party in this proceeding to learn whatever it can about PacifiCorp's analyses and strategies in its contract renegotiations with other QFs. Such disputes would impose an additional burden on this proceeding.

Biomass One has failed to establish good cause to support a late intervention. It cites no facts arising since the filing of this rate case, or the deadline to intervene, that were not available or reasonably discoverable that prevented a timely petition to intervene. PacifiCorp, Staff, and other parties to this docket should not be penalized for Biomass One's failure to timely intervene and fully participate in these proceedings.

ORDER

IT IS ORDERED that the petition to intervene, filed by Biomass one L.P., 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 of OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.