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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UI 196

In the Matter of)
)
 PACIFICORP.)
)
 Application for an order approving the West)
 Valley generation facilities lease agreement)
 with PacifiCorp Power Marketing.)

ORDER

DISPOSITION: APPLICATION APPROVED WITH CONDITIONS

On March 6, 2002, PacifiCorp (or company) filed an application seeking the Commission's approval of a fifteen-year generation facilities lease agreement for the West Valley Project between PacifiCorp and PacifiCorp Power Marketing (PPM).

On May 22, 2002, the Commission Staff published its public meeting memorandum recommending approval of the application. On May 24, 2002, the Industrial Customers of Northwest Utilities (ICNU) filed Comments in Opposition to the application.

OPINION

Jurisdiction

ORS 757.005 defines a "public utility" as anyone providing heat, light, water or power service to the public in Oregon. The Company is a public utility subject to the Commission's jurisdiction.

Affiliation

An affiliated interest relationship exists under ORS 757.015.

Applicable Law

ORS 757.495 requires public utilities to seek approval of contracts with affiliated interests within 90 days after execution of the contract.

ORS 757.495(3) requires the Commission to approve the contract if the Commission finds that the contract is fair and reasonable and not contrary to the public interest. However, the Commission need not determine the reasonableness of all the financial aspects of

the contract for ratemaking purposes when approving the contract. Those issues may be resolved in a different proceeding.

DISCUSSION

At the public meeting on May 28, 2002, the Commission adopted Staff's recommendation. Staff's recommendation is attached as Appendix A, and incorporated by reference. Based on a review of the application, Staff's memorandum, ICNU's comments, and the Commission's records, the Commission finds that the application satisfies applicable statutes and administrative rules.

The Commission acknowledges the relationship between this application and the stipulation adopted on May 20, 2002, in Order No. 02-343 (UE 134). That stipulation, to which ICNU, Staff, the Citizens' Utility Board, and PacifiCorp were signatories, provides that if the Commission approves the company's affiliated interest application in this docket, the company's revenue requirement for Oregon operations will increase by not more than \$1.2 million. The parties retained their rights to contest this affiliated interest application.

In its comments, ICNU challenges this application on the grounds it does not meet the requirements of ORS 757.495, the statute which governs affiliated interest transactions.¹ The Commission has considered the issues raised by ICNU. In our view, Staff's memorandum adequately disposes of the issues relevant to affiliated interest transactions.

In granting this application, we make no determination on the prudence of the West Valley project lease beyond the \$1.2 million that was included in the UE 134 stipulation.

CONCLUSIONS

1. The Company is a public utility subject to the jurisdiction of the Commission.
2. An affiliated interest relationship exists.
3. The agreement is fair, reasonable, and not contrary to the public interest.
4. The application should be granted, with certain conditions.

ORDER

¹ ICNU challenges the application for the following reasons: 1) the lease is not related to serving Oregon customers and is not in the public interest; 2) the lease is the result of less-than-arm's length negotiations between PacifiCorp and PPM and is designed to avoid the requirements of federal law; 3) PacifiCorp has not demonstrated the lease is the least cost alternative; 4) PacifiCorp's proposed rate treatment of the West Valley generation lease conflicts with the administrative rules implementing SB 1149; and 5) PacifiCorp has not demonstrated the West Valley project will be used and useful before including the costs of the lease in Oregon rates.

IT IS ORDERED that the application of PacifiCorp for authority to enter into a fifteen-year generation facilities lease agreement for the West Valley Project with PacifiCorp Power Marketing is granted, with the following conditions:

1. PacifiCorp shall provide the Commission access to all its books of account, as well as all its documents, data, and records that pertain to the West Valley generation facilities lease (the Lease) with PPM. Additionally, PacifiCorp shall provide copies of all final documents regarding the Lease with PPM.
2. The Commission reserves the right to review for reasonableness all financial aspects of this transaction in any rate proceeding or alternative form of regulation.
3. PacifiCorp shall notify the Commission in advance of any substantive changes to the lease, including any material changes in any revenue or cost. Any changes to the terms which alter the intent and extent of activities under the lease from those approved herein shall be submitted in an application for a supplemental order (or other appropriate format) in this docket.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

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