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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UE 134
UM 1047

In the Matter of)
)
PACIFICORP)
)
Application for Approval of Revised Tariffs)
to Reflect New Net Power Costs. **(UE 134)**)
_____)

ORDER

In the Matter of)
)
PACIFICORP)
)
Application for an Accounting Order)
Regarding Deferral of Trail Mountain Mine)
Unrecovered Costs. **(UM 1047)**)

DISPOSITION: RECONSIDERATION GRANTED; ISSUES LIMITED

On June 11, 2002, the Industrial Customers of Northwest Utilities (ICNU) filed an application for reconsideration of Order No. 02-343 (Order). That Order adopted a stipulation resolving all issues in these consolidated dockets. In its reconsideration application, ICNU alleged that the Commission approved the ratemaking treatment of the West Valley lease without a comprehensive review of the costs, that the parties did not have a "meeting of the minds" when entering into the stipulation regarding the lease, and that ORS 757.355 was violated. ICNU asks the Commission to remove the section of the stipulation (Paragraph 9) related to the lease, and allow the parties to litigate the prudence of the lease.

On July 1, 2002, the Commission Staff (Staff), and PacifiCorp filed responses. Staff recommended that reconsideration be granted, while PacifiCorp stated that reconsideration should be denied.

In reviewing requests for reconsideration, we are guided by the requirements in OAR 860-014-0095. Section 3 of that rule states that the Commission may grant an application if the applicant shows that there is:

- (a) New evidence which is essential to the decision and which was unavailable and not reasonably discoverable before issuance of the order;
- (b) A change in the law or agency policy since the date the order was issued, relating to a matter essential to the decision;
- (c) An error of law or fact in the order which is essential to the decision; or
- (d) Good cause for further examination of a matter essential to the decision.

DISCUSSION

Background

On March 29, 2002, ICNU, Staff, PacifiCorp and the Citizen's Utility Board (CUB) submitted a stipulation that resolved numerous outstanding issues. These issues included the establishment of annual net power costs, the treatment of the Trail Mountain Mine closure costs and the sale of Hermiston properties, the amortization of above market summer forward purchases, and the ratemaking treatment of the West Valley lease. In its request, ICNU challenges the stipulation's treatment of the lease costs. Accordingly, we limit our review solely to matters included in Paragraph 9 of the stipulation, along with any relevant testimony.

ICNU claims there is an error of law in the Order, and that good cause exists for additional examination of a matter essential to the decision. We address each issue in turn.

Error of Law

ICNU alleges that ORS 757.355 was violated when the Commission approved the ratemaking treatment of the lease agreement. That statute provides that:

No public utility shall, directly or indirectly, by any device, charge, demand, collect or receive from any customer rates which are derived from a rate base which includes within it any construction, building, installation or real or personal property not presently used for providing utility service to the customer.

ICNU claims that the West Valley project was not "used and useful" as of June 1, 2002, so inclusion of the lease costs in rates violated ORS 757.355. ICNU's reliance on the statute is misplaced. ORS 757.355 addresses rates derived from rate base, not rates derived from approved revenue requirement. Because the lease at issue is an

expense item, ORS 757.355 does not apply.¹ There is no error of law upon which to grant reconsideration.

Good Cause

In Paragraph 9 of the stipulation, the parties addressed ratemaking treatment of the lease. The parties further stated:

The Parties do not agree by this paragraph that the Affiliated Interest Application in UI 196 is appropriate or waive their rights to contest that Application or its terms or conditions.

ICNU contends that the parties did not have a meeting of the minds when they reached agreement on the ratemaking treatment of the West Valley lease. ICNU claims that it informed all parties of ICNU's plan to oppose the affiliated interest application involving the West Valley lease. According to ICNU, it was told to raise the lease challenges in the affiliated interest docket (UI 196) rather than in the UE 134/UM 1047 dockets.

It is highly unusual for parties to address the ratemaking treatment of an affiliated interest transaction that has not received Commission approval. Determining the rate impact of a transaction prior to approval clearly places the "cart before the horse." Because of this sequence, with the concomitant confusion that occurred, we find that good cause exists for further examination of the lease.

We do not accept ICNU's argument that there was no "meeting of the minds." Further, there is no record upon which to determine whether ICNU was told to raise ratemaking issues in an affiliated interest transaction. We are not aware of any prior instances where the Commission resolved ratemaking issues in an affiliated interest docket. Indeed, such issues should not be addressed in an affiliated interest docket. Ratemaking treatment issues belong in a rate case, not in an affiliated interest docket.

Scope of Reconsideration

In this order, we determined that ORS 757.355 was not violated. It is not appropriate for that issue to be raised in the reconsideration proceedings. As for other issues raised by ICNU, we leave it up to the Administrative Law Judge to determine the proper scope of future proceedings.

¹ See, *Citizens Utility Board v. PUC*, 154 Or App 702, 962 P.2d 744 (1998), in which the court determined that ORS 757.355 applies to "property."

ORDER

IT IS ORDERED that:

1. Reconsideration of Order No 02-343 is granted, with such reconsideration limited to the West Valley Lease found in Paragraph 9 of the stipulation.
2. ORS 757.355 was not violated by including the West Valley lease costs in Oregon rates.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

A party may appeal this order to a court pursuant to ORS 756.580.