

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1002

WAH CHANG,

Petitioner,

vs.

PACIFICORP,

Respondent.

ORDER

DISPOSITION: MOTION FOR SUMMARY AFFIRMANCE DENIED;
CASE HELD IN ABEYANCE

Introduction and Background

On December 1, 2000, Wah Chang filed a petition for relief from a special contract it had signed with PacifiCorp for electric service. Wah Chang asked for immediate relief from the rates specified in the special contract, and for permanent relief from those rates. The Commission denied Wah Chang's request for interim relief in Order No. 01-185 on February 21, 2001. The Commission denied Wah Chang's request for permanent relief from the rates specified in its special contract with PacifiCorp, called the Master Electric Service Agreement (MESA), on October 15, 2001, in Order No. 01-873.

On May 23, 2002, Wah Chang filed a motion with the Marion County Circuit Court requesting permission to present additional evidence to the Commission. Wah Chang sought to present evidence of (1) manipulation of the Western wholesale electricity market in the years 2000 and 2001; and (2) complaints filed by PacifiCorp with the Federal Energy Regulatory Commission (FERC). On June 18, 2002, Marion County Circuit Judge Don Dickey issued a letter ruling granting Wah Chang's motion. Judge Dickey found that the additional evidence Wah Chang wanted to present was material and not available at the time of the Commission's hearing. He stated that unless the Commission decided that under no foreseeable circumstances could the additional evidence change the result of the Commission's determination, the Commission should

reopen its record to allow Wah Chang the opportunity to present the additional evidence. The Commission then should apply its rules and law to make a final determination. On July 22, 2002, Judge Dickey signed an order granting Wah Chang's motion to present additional evidence.

In September 2002 the parties began filing documents with the Commission addressing how the rest of the case should be processed. The parties agreed that the deadline for filing briefs on that issue would be December 18, 2002. In addition to the briefs, on November 15, 2002, PacifiCorp filed a motion for summary affirmance of Order No. 01-873. On December 6, 2002, Wah Chang filed a response specifically addressing PacifiCorp's November 15 motion.

Wah Chang points out that FERC and the Oregon Attorney General are investigating the electric wholesale market on which the last two years of the MESA rates are based. Wah Chang requests that the Commission hold this proceeding in abeyance until the FERC investigation is complete. A thorough body of information will then be available, and Wah Chang may want to present some of that information to the Commission in a hearing held at that time.

PacifiCorp asks the Commission to issue an order now stating that the Commission would not change its determination in this case no matter what future evidence might reveal. PacifiCorp argues that evidence of wrongdoing in the California electricity market is irrelevant to the issue of whether the MESA rates are just and reasonable. The issues, as they were presented to the Commission at the hearing, revolved around the question of whether the significant price increases in the California market (without regard to whether the price increases were caused by legitimate market forces or by fraud) made the MESA rates unjust or unreasonable. The reasons for the price increases were simply not important to the resolution of the issues presented to the Commission. Order No. 01-873 was decided primarily on the basis that Wah Chang had knowingly taken a risk relating to market prices after PacifiCorp had refused to assume that risk. Wah Chang had benefited during the first three years of the MESA and should not be excused from paying the agreed-upon rates applicable during the last two years of the five-year contract. PacifiCorp points out that the Commission also considered other factors, including evidence that Wah Chang's parent corporation had profited from sales of electricity executed during that time of high prices.

Commission Analysis and Decision

We are not willing to say that under no circumstance could evidence about the manipulation of the wholesale electricity market on which the subject MESA rates were based change the Commission's determination of this dispute. As an example, it is theoretically possible that the California wholesale electricity market became dysfunctional because of PacifiCorp's manipulation, deceit, illegal conduct, and fraud in that market. The record does not show that to be the case, but the example demonstrates

that future evidence could reveal circumstances and conduct we would not want to ignore. We do not now want to foreclose future consideration of such evidence.

Order No. 01-873 was based on the record presented at the hearing. We are not willing to declare now that possible future evidence could not change the decision reached in that Order. The Circuit Court has ruled that we should give Wah Chang the opportunity to present post-hearing evidence. We will, of course, comply with the court's decision. If this proceeding is reopened, the Commission's normal rules and procedures will be used, including decisions on the admissibility of material offered into the record.

When should the hearing to consider any additional evidence be held? Wah Chang asks us to wait until the FERC investigation is completed. That is a reasonable request. We do not want to hold a hearing that includes only some of the evidence that might be available. We want to make a decision based on all the relevant information that can be produced. That evidence will not be available until the appropriate officials complete their investigations. At that time, if Wah Chang determines that it can present evidence that might cause us to change the outcome of this case, it may file a motion to reopen the record to receive that evidence. An evidentiary hearing will then be held.

Discovery

Wah Chang wants to engage in discovery from PacifiCorp while this case is held in abeyance. One specific request asks PacifiCorp to send to Wah Chang a copy of all documents filed by PacifiCorp with FERC in a particular FERC investigation docket. PacifiCorp objects to any discovery at this time on several grounds. On the specific information request mentioned above, PacifiCorp states that the requested documents either are publicly available to Wah Chang or are confidential.

PacifiCorp should not be forced to assume the burden of supplying to Wah Chang information that is available from public sources. Beyond that, the parties should not be burdened with discovery issues while this case is held in abeyance. There will be adequate time to resolve discovery issues when this case becomes active again.

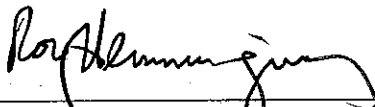
ORDER

IT IS ORDERED that:

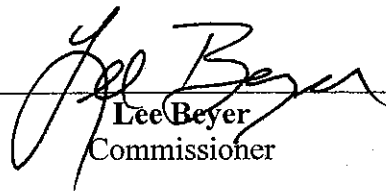
1. The motion for summary affirmance of Order No. 01-873 filed by PacifiCorp is denied;
2. This case is held in abeyance until the Commission issues an order reopening or permanently closing this docket or an Administrative Law Judge issues a procedural Ruling relating to possible future events in this proceeding.

Made, entered, and effective

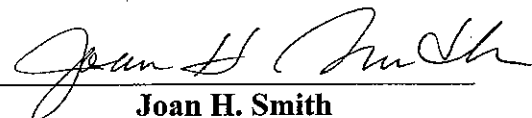
MAR 13 2003



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.

Um1002wahordrnwev