

ORDER NO. 03-238

ENTERED APR 21 2003

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

AR 453

In the Matter of a Proposed Rule to )  
Require a Full Commission for a Quorum ) ORDER  
on Votes at a Public Meeting to Approve )  
Rate Changes In Major Cases. )

DISPOSITION: RULE ADOPTED

On December 17, 2002, the Public Utility Commission of Oregon (Commission) initiated a rulemaking proceeding to consider adoption of a rule requiring the full Commission to be present at a public meeting when approving major rate changes. On December 20, 2002, the Commission filed the notice of rulemaking and statement of need and fiscal impact with the Oregon Secretary of State. Notice of the rulemaking was published in the Oregon Bulletin on February 1, 2003. Interested persons were given until February 21, 2003, to file written comments. The Industrial Customers of Northwest Utilities (ICNU) and PacifiCorp filed timely comments. No request was made for a public hearing.

On April 15, 2003, the Commission deliberated on this matter at its regular public meeting in Salem, Oregon. The Commission entered the decisions set out in this order.

**Background and Comments**

This proposed rule arose from an incident during the August 6, 2002 public meeting when only two Commissioners were present. At that public meeting, the Commission considered PacifiCorp's request to increase its amortization of deferred excess net power costs from three percent to six percent of PacifiCorp's annual revenues pursuant to ORS 757.259. One Commissioner voted to approve the increase, while the other voted to deny the increase. Due to the tie vote, PacifiCorp's filing went into effect by default. Because the Commission did not affirmatively vote to make a change, the resulting decision was controversial. The purpose of this rule is to address that situation.

ICNU's Comments

While ICNU supports adoption of a rule requiring affirmative approval of rates changes by a majority vote of the Commission, ICNU does not believe that the proposed rule will achieve this goal. According to ICNU, the proposed rule is deficient in three ways. First, the rule should require affirmative approval of rate changes, and not simply require that all Commissioners be present to take action on a proposed rate change. ICNU's concern is that rate changes should take effect by Commission action, and not by operation of law. Second, the rule should apply to all rate changes, not simply "major" rate changes. Third, any ambiguity regarding the applicability of the rule should be removed. Using these principles, ICNU proposes the following administrative rule:

In all cases in which a utility files a proposed rate or schedule of rates under ORS 757.210 or 759.180, the Commission shall enter an order approving, modifying, denying, or otherwise disposing of the proposed rate or schedule of rates. No proposed rate or schedule of rates shall take effect except after approval by a majority of the members of the Commission.

PacifiCorp's Comments

Although PacifiCorp supports the underlying purpose of the rule, it argues that the need for and scope of the rule are rather limited. PacifiCorp points out that major rate changes are rarely made during regular public meetings, but rather in private decision meetings, as set forth in our Internal Operating Policy Guidelines. According to PacifiCorp, the proposed rule would apply to a very limited number of cases, the most common of which are amortization decisions for amounts deferred under ORS 757.259 and 759.200. To make certain that a new public meeting requirement is not established for major rate changes, PacifiCorp proposes that "major rate change" be defined as follows:

A vote on an application seeking to amortize deferred expenses under ORS 757.259 and ORS 759.200, where the amount involved exceeds some minimum amount.

PacifiCorp is also concerned about the relationship of the proposed rule to the "file and suspend" system currently in place. Under the current system, "action" can be taken by operation of law: *i.e.*, ORS 757.215 provides that upon expiration of a suspension period, rates become final without any affirmative action by the Commission. PacifiCorp claims that this system is in place in all of the other states in which it operates,

except for California, and is the predominant statutory scheme in the country. As PacifiCorp analyzes the proposed rule, it should only be applicable when the Commission votes on a major rate change at a public meeting. The rule should not apply when the Commission permits a rate change to take effect by operation of law.

### **Discussion**

We proposed this rule to insure attendance of all Commissioners at a public meeting where a major rate change was to be addressed. The situation that occurred in August 2002, *i.e.*, a rate change going into effect upon a tie vote, is one to be avoided, as it does not promote public confidence in the Commission's decision-making process. The commenting participants agreed that this situation should be avoided, if possible.

We have concerns with the language proposed by ICNU as it does not comport with the current statutory framework. Under ORS 757.215, a newly filed tariff goes into effect unless the Commission suspends it within 30 days. Then, at the end of the suspension period, the filed tariff takes effect unless the Commission takes action contrary to the tariff. ICNU's proposed rule provides that the tariff may not take effect unless approved by a majority of the Commission. This proposed rule is inconsistent with the statutory scheme.

The rule as proposed does not define "major rate change." We will adopt specific language indicating that any rate increase for any customer class greater than two percent will trigger the rule.

Even with these changes, however, there may be circumstances that all three of the Commissioners will not be available for a meeting. For example, an absence may occur due to illness, other unavoidable commitments, or an unfilled vacancy on the Commission. In all of these instances, we would determine that an emergency existed.

The amended proposed rule, with changes in bold, will be as follows:

Except in cases of emergency, for all votes of the Public Utility Commission of Oregon at a public meeting that approve a major rate change under ORS 757.205 or 759.180, a quorum is the full commission. **For purposes of this rule, a major rate change is defined as an increase of two percent or more for any customer class.**

**ORDER**

IT IS ORDERED that:

1. OAR 860-012-0040, as set forth in Appendix A, is adopted.
2. The rule shall be effective upon filing with the Secretary of State.

Made, entered, and effective \_\_\_\_\_.

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**Roy Hemmingway**  
Chairman

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**Lee Beyer**  
Commissioner

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**Joan H. Smith**  
Commissioner

A party may petition the Commission for the amendment or repeal of a rule pursuant to ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule pursuant to ORS 183.400.

**860-012-0040**

**Public Meetings**

**Except in cases of emergency, for all votes of the Public Utility Commission of Oregon at a public meeting that approve a major rate change under ORS 757.205 or 759.180, a quorum is the full commission. For purposes of this rule, a major rate change is an increase of two percent or more for any customer class.**

**Stat. Auth.: ORS Ch. 183, 192, 756, 757 & 759**

**Stats. Implemented: ORS 192.610 et seq., 757.205 & 759.180**

**Hist.: New**