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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UCB 13

In the Matter of UTILITY REFORM)	
PROJECT, ET AL.)	ORDER
)	
VS.)	
)	
PORTLAND GENERAL ELECTRIC)	
COMPANY)	

DISPOSITION: RECONSIDERATION DENIED

On September 9, 2003, the Utility Reform Project (URP) filed an application for reconsideration of Order No. 03-401. It argues that the Commission erred in dismissing its complaint, which it characterizes as a request to open a deferred account. It also asserts that the Commission made an error of law in applying the filed rate doctrine in Oregon. Portland General Electric Company (PGE) responded on September 24, 2003, that the complaint was properly dismissed because the request to open a deferred account did not comply with the applicable statutes and administrative rules and that the filed rate doctrine does apply in Oregon. We agree with PGE and adhere to our decision in Order No. 03-401.

We review the application for reconsideration for (1) new evidence that was unavailable and not reasonably discoverable before the order was issued; (2) a change in the law or agency policy since the date the order was issued; (3) an error of law or fact in the order; or (4) good cause for further examination. OAR 860-014-0095(3). "Any of these grounds, if essential to the Commission's decision, constitutes sufficient reason to grant reconsideration." *In re PacifiCorp*, UE 121/ UE 127, Order No. 03-187 at 3.

Deferred Account

First, we address URP's argument that we erred in not allowing it to amend its complaint to request the opening of a deferred account. URP asserts that we varied from the rules of civil procedure in denying the amendment and erred in deciding that allowing the amendment would violate PGE's right to respond. PGE responds that

URP never made a proper application for a deferred account and that such an account can only apply to funds collected in the future.

Even if URP were correct that an amendment to the complaint should have been permitted, URP never made a proper application for a deferred account under ORS 757.259 and OAR 860-027-0300. In URP's response to PGE's motion to dismiss, it stated, "A deferred accounting should be ordered and URP will so request." However, URP never filed such a request. Further, OAR 860-027-0300(3)(b) requires an application for a deferred account to contain, among other things, "a reference to the section(s) of ORS 757.259 or ORS 759.200 under which deferral may be authorized." URP never filed an application specifying what part of the statute authorized the deferred account. Finally, even if we can infer that URP would have invoked the catchall authorization, ORS 757.259(2)(e), the application still would have failed because deferred accounts can only collect funds prospectively. ORS 757.259(3) states, in part, "A deferral may be authorized for a period not to exceed 12 months beginning *on or after* the date of application." (Emphasis added.) Similarly, OAR 860-027-0300(3)(d) states that an application for a deferred account must include "[a]n estimate of the amounts to be recorded in the deferred account for the 12-month period *subsequent* to the application." (Emphasis added.) As PGE indicates in its response, URP's complaint related to rates charged from 1997 through 2001. Therefore, the complaint was properly dismissed and the so-called amendment was properly denied.

Filed Rate Doctrine

Second, URP asserts that the filed rate doctrine does not apply in Oregon and that we erred in applying it in this case. In support of this argument, URP quotes from a transcript of a colloquy between an attorney for the Public Utility Commission and Judge Lipscomb of the Marion County Circuit Court in an application for judicial review of Order No. 02-227 in which Judge Lipscomb appears to question the filed rate doctrine. PGE counters that URP takes the comments out of context and that the judge's comments do not have the effect of precedent where they were made in a case in which there has been no final ruling as to the filed rate doctrine or any other matter.

"The filed rate doctrine generally holds 'that the rate filed with a commission is the only lawful charge and that deviation from it is not permitted on any pretext.'" *ICNU v. PacifiCorp*, UCB 5, Order No. 03-534 at 12 n 27. That doctrine is codified at ORS 757.225:

No public utility shall charge, demand, collect or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in printed rate schedules as may at the time be in force, or demand, collect or receive any rate not specified in such schedule.

The Oregon Supreme Court has held that a utility may only charge the rate in its filed tariff. *See Oregon-Wash. R. & N. Co. v. Cascade C. Co.*, 101 Or 582, 588-90, 197 P 1085 (1921). Further, the utility cannot be ordered to give refunds based on past rates which it lawfully charged under its tariff. *See McPherson et al v. Pacific P. & L. Co.*, 207 Or 433, 449, 296 P2d 932 (1956) ("the Commissioner has no authority to award any reparations, either for unreasonable or unjustly discriminatory rates, or for overcharges"). We recently discussed this issue in great detail in *In re PGE*, UM 989, Order No. 02-227 at 8-11, in which we rejected a similar argument by URP. In that order, we stated, "The filed rate doctrine is a companion to the rule against retroactive ratemaking, and these two concepts are cornerstones of Oregon regulatory law." *In re PGE*, UM 989, Order No. 02-227 at 8. Although this order is currently under judicial review, it is still in effect. ORS 756.565. Through case law, Commission order, and statute, the filed rate doctrine applies in Oregon, and we did not err in applying it in Order No. 03-401.

ORDER

IT IS ORDERED that the application for reconsideration is denied.

Made, entered, and effective _____.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
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.