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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 995/UE 121/UC 578

In the Matter of the Application of PACIFICORP for an)
Accounting Order Regarding Excess Net Power Costs.)
(UM 995))

In the Matter of PACIFICORP's Application for Partial)
Authorization of Its Request to Defer Excess Net Power)
Costs and Approval of Its Request to Implement an)
Amortization in Rates of Deferred Excess Net Power)
Costs. (UE 121))

INDUSTRIAL CUSTOMERS OF NORTHWEST)
UTILITIES and CITIZENS' UTILITY BOARD,)

Complainants,)

vs.)

PACIFICORP,)

Defendant. (UC 578))

ORDER ON
RECONSIDERATION

DISPOSITION: APPLICATION FOR RECONSIDERATION DENIED

On November 2, 2000, PacifiCorp applied for an accounting order authorizing deferral of excess net power costs, to begin on that date for later amortization in rates. The application was filed pursuant to ORS 757.259(2)(e), which allows the Commission, on application of a utility, to authorize deferral of certain items for later incorporation in rates. On December 4, 2000, the Industrial Customers of Northwest Utilities (ICNU) and Citizens' Utility Board (CUB) filed comments opposing the application. Commission Staff filed comments raising a number of issues for

discussion and indicating that Staff might be willing to support PacifiCorp's application. PacifiCorp filed reply comments on December 14, 2000.

On January 9, 2001, the Commission issued Order No. 01-085, which found that PacifiCorp's application could proceed as a matter of law. On January 18, 2001, PacifiCorp filed Advice No. 01-002, Application for Amortization, docketed as UE 121.

On January 22, 2001, ICNU and CUB filed a complaint, docketed as UC 578, to determine whether the rate increase proposed in PacifiCorp's application is just and reasonable and whether the proposed amortization of deferred amounts satisfies the requirements of ORS 757.259. On April 3, 2001, ICNU amended the complaint.

At its Public Meeting on January 23, 2001, the Commission voted to grant PacifiCorp's November 2, 2000, application for an accounting order for a partial deferral of net power costs up to \$22.8 million. On February 13, the Commission issued Order No. 01-171, memorializing its decision. On April 16, 2001, the ICNU filed an application for reconsideration of Order No. 01-171.

At its February 20, 2001, Public Meeting, the Commission voted to allow PacifiCorp to amortize the \$22.8 million it had deferred in Order No. 01-171. On February 21, 2001, the Commission issued Order No. 01-186, approving the amortization. On April 23, 2001, ICNU filed an application for reconsideration of Order No. 01-186 to correct errors of law and fact essential to the decision, to review new evidence, and to preserve ICNU's opportunity for further proceedings related to these issues. PacifiCorp filed a reply on May 8, 2001. This order addresses reconsideration of Order No. 01-186. Reconsideration of Order No. 01-171 was denied by Order No. 01-469.

ICNU's Argument

Interim rate relief. ICNU argues that PacifiCorp has not satisfied the standard for interim rate relief. The Commission has not issued a final ruling regarding whether PacifiCorp is entitled to amortize deferred amounts. In Order No. 01-186, the Commission found that based on the evidence available to it, it would amortize \$22.8 million pursuant to the interim rate relief statute. Order No. 01-186 at 2. Despite authorizing interim rate relief, the Commission did not make any rulings of fact or law in support of its conclusion that PacifiCorp is entitled to interim rate relief.

The Commission, according to ICNU, has established a rigorous standard for approval of an application for interim rate relief, which requires that before the Commission will even consider granting such relief, a utility must show that; (1) it will satisfy its burden of proof on the underlying rate increase (Order No. 89-687); (2) without the interim relief it will face severe financial

distress or otherwise be unable to serve the public at reasonable rates (Order No. 87-1017); and (3) there will be a very slight impact on ratepayers resulting from the rate increase (Order No. 84-463). If a utility meets this standard, the Commission will

consider, but reserves the discretion to deny, a request for interim rate relief. Order No. 87-1017. Even when the Commission approves interim rate relief, it often penalizes, conditions, or offsets the rate increase. Order No. 82-242; Order No. 87-406.

ICNU contends that PacifiCorp requested no interim rate relief and presented no evidence that would justify the approval of interim rate relief. PacifiCorp has not stated that it is suffering from severe financial distress or that without interim relief PacifiCorp would be unable to serve the public at reasonable rates. The factual allegations presented in PacifiCorp's deferral and amortization applications do not support granting interim rate relief. The Commission should grant reconsideration to make the legal and factual determinations necessary to determine whether PacifiCorp is entitled to interim rate relief.

Earnings review. ICNU contends that the Commission must review PacifiCorp's current earnings to allow amortization. Oregon law allows the Commission to amortize deferred amounts "only to the extent authorized by the commission in a proceeding to change rates and upon review of the utility's earnings at the time of application to amortize the deferral." ORS 757.259(4). Any waiver of this requirement would violate the express terms of the statute and the prohibition on retroactive ratemaking, citing ORS 757.259(4) and Op. Att'y Gen. No. OP 6076 at 10 (May 18, 1987).

According to ICNU, the Commission did not review PacifiCorp's earnings at the time of PacifiCorp's amortization application. Neither Order No. 01-186 nor the accompanying Staff report mentioned PacifiCorp's current earnings. However, the Staff report incorporated by reference in Order No. 01-171 stated that PacifiCorp's "revenues and expenses from UE 111 are reasonably representative of current revenues and expenses, except for power costs, and can be relied upon as an earnings review." Order No. 01-171 at 4.

ICNU contends that regardless of whether PacifiCorp's prior earnings in UE 111 are reasonably representative of current earnings, they are not PacifiCorp's actual earnings in February 2001, as required by ORS 757.259(4). Further, there is no actual record in this proceeding that would allow determination of PacifiCorp's current earnings. The Commission should reconsider its ruling that a review of current earnings is not necessary under ORS 757.259(4) prior to amortization of deferred amounts.

New evidence. ICNU argues that new evidence shows that the deferral and amortization of the \$22.8 million in net power costs did not minimize the frequency of rate changes. On March 23, 2001, PacifiCorp filed an application for approval of a power cost adjustment (PCA) and PCA mechanism. The application was docketed as UE 122. PacifiCorp's application is in addition to PacifiCorp's requested rate increase in its general rate case, UE 116, and its request to defer a continually expanding amount of excess net power costs in UM 995.

ICNU argues that the PCA application is a request for a rate increase that changes the Commission's underlying assumption in Order Nos. 01-085, 01-171, and 01-186 that deferral and amortization of amounts would minimize rate changes or fluctuations. Therefore, ICNU contends, PacifiCorp's deferral does not comply with the deferred accounting statute, ORS 757.259(2)(e). The deferral and amortization of PacifiCorp's net power costs did not reduce the frequency of rate changes and fluctuations. Without the initial deferral, according to ICNU, PacifiCorp would not have been permitted to amortize amounts and increase customer rates. In addition, the deferral and amortization did not prevent PacifiCorp from filing for an additional rate increase in its PCA application. Contrary to reducing rate changes, the number of rate changes that PacifiCorp is currently seeking is unprecedented.

ICNU urges the Commission to reconsider its ruling on whether deferral and amortization of PacifiCorp's net power costs will minimize the frequency of rate changes or fluctuations in light of this new evidence. It also urges the Commission to dismiss Docket Nos. UE 121, UM 995, UC 578, and UE 122.

PacifiCorp's Reply

PacifiCorp opposes ICNU's application. PacifiCorp contends that ICNU has failed to state a basis on which to grant reconsideration under OAR 860-014-0095(3). PacifiCorp argues, in short, that the "error of law" ICNU cites is a reference to the wrong legal standard [see Footnote 1 above, addressing this issue]; that the Commission did perform the required earnings review before approving the amortization; and that the "new evidence" ICNU refers to, PacifiCorp's subsequent filing in UE 122, does not provide grounds for reconsideration.

Earnings review. PacifiCorp contends that the earnings review required by ORS 757.259(4) was performed in connection with the issuance of Order No. 01-186. PacifiCorp cites to the Staff Memorandum to the Commission dated January 19, 2001, attached to and incorporated by reference in Order No. 01-171 approving the deferral of \$22.8 million, at 3. The Memorandum states that PacifiCorp's earnings were examined in the recent rate case, UE 111, which concluded in September 2000, and continues: "Staff believes those revenues and expenses from UE 111 are reasonably representative of current revenues and expenses, except for power costs, and can be relied upon as an earnings review." PacifiCorp argues that the UE 111 information provides sufficient financial results data with which to determine PacifiCorp's earnings for a period reasonably representative of the time period for which the deferral is sought and satisfies the requirements of ORS 757.259(4).

New evidence. PacifiCorp argues that its subsequent filing in UE 122 does not jeopardize the legal basis for the deferral and amortization of excess net power costs under ORS 757.259. PacifiCorp points out that the basis for its application for authorization to defer amounts in

this proceeding was to minimize the frequency of rate changes. The frequency of rate changes would have been minimized if the amortization of deferred amounts had been postponed until the conclusion of UE 116, as anticipated in the application. Accordingly, there was a lawful basis for granting the deferral under ORS 757.259(2) and for amortizing the deferred amounts in rates. The subsequent filing in UE 122 does not jeopardize this legal basis.

First, PacifiCorp points out that the relief requested by PacifiCorp in UE 122 may not be granted. Staff opposes granting the application for relief, according to the Staff Report dated April 26, 2001. If the Commission accepts Staff's recommendation, there would be no additional rate change. Second, PacifiCorp maintains that its filing in UE 122 concerns the same excess net power costs as those at issue in UM 995. The Power Cost Adjustment the company requests in UE 122 would serve to reset the baseline for purposes of the UM 995 deferrals, thereby reducing the level of subsequent deferrals in that proceeding. Such a filing is not inconsistent with the underlying assumption of the deferred accounting application but recognizes the limitations of the deferred accounting remedy, given the 3 percent cap in ORS 757.259(6).

Applicable Law. OAR 860-014-0095(3) provides:

The Commission may grant an application for rehearing or reconsideration 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.

ORS 757.259(2)(e) provides:

- (2) Upon application of a utility or ratepayer or upon the commission's own motion and after public notice and opportunity for comment, the commission by order may authorize deferral of the following amounts for later incorporation in rates:

* * * * *

(e) Utility expenses or revenues, the recovery or refund of which the commission finds should be deferred in order to minimize the frequency of rate changes or the fluctuation of rate levels or to match appropriately the costs borne by and benefits received by ratepayers.

Commission Discussion and Resolution

Interim Rate Relief. An interim rate increase is granted pursuant to ORS 757.215(5). In that statute, the Commission in a suspension order authorizes the utility to collect some or all of its revenue request. The amount authorized under this subsection is subject to refund.

By contrast, ORS 757.215(4) applies when the Commission decides not to suspend rates. In those cases, the entire rate increase goes into effect and is subject to refund only if someone requests a hearing and the Commission, as a result of the hearing, finds that it authorized rates that are too high. In that case, the Commission orders a refund of the difference.

We refer to ORS 757.215(5) as the interim rate provision because it necessarily involves an interim order. On the other hand, when the Commission decides under ORS 757.215(4) not to suspend rates, more often than not, there will be no interim order.

Thus ICNU is mistaken about the amortization decision being made subject to the “interim rate relief statute.” We stated that the amortization was *subject to refund* pursuant to ORS 757.215(4), which provides in relevant part:

If the commission is required to . . . conduct a hearing on a rate or schedule of rates filed pursuant to ORS 757.210, but does not order a suspension thereof, any increased revenue collected by the utility as a result of such rate or rate schedule becoming effective shall be received subject to being refunded.

That is not the authorizing statute for the amortization. ICNU’s argument on this point is based on a misunderstanding of the order and the statutory provision cited. ICNU’s argument is rejected.

Earnings Review. We find that the earnings review underlying approval of the amortization in Order No. 01-186 was sufficient for purposes of ORS 757.259(4). We adopt Staff’s view, as expressed in its memorandum of January 19, 2001, that the revenues and expenses from UE

111 are reasonably representative of current revenues and expenses except for power costs, and can be relied on as an earnings review. ICNU's argument on this issue fails.

New Evidence. ICNU's argument on this point fails as well. ICNU contends that the UE 122 filing shows that deferral and amortization of amounts in UM 995 would not minimize rate changes. At its May 14, 2001, Special Public Meeting, the Commission suspended the proposed tariffs in UE 122. Thus, UE 122 has no impact on the basis for PacifiCorp's application in this proceeding.

We conclude that ICNU has not shown grounds under OAR 860-014-0095 for reconsideration of Order No. 01-186.

ORDER

IT IS ORDERED that the application for reconsideration of Order No. 01-186 filed by the Industrial Customers of Northwest Utilities is denied.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561.