

ORDER NO. 13 089

ENTERED MAR 14 2013

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 253

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Investigation of Municipal Exaction
Adjustment for the City of Redmond.

ORDER

DISPOSITION: RECONSIDERATION GRANTED; SETTLEMENT
APPROVED AS MODIFIED; DOCKET CLOSED

I. INTRODUCTION

PacifiCorp, dba Pacific Power, and the City of Redmond seek reconsideration of our Order No. 12-453. In that order, we determined that Redmond ratepayers should bear the incremental costs incurred by Pacific Power to place underground existing and proposed electric distribution. We based our conclusion on the undisputed fact that the existing and new facilities were required to be placed underground due to local governmental action. For reasons that follow, we grant the application for reconsideration and revise our prior order.

II. BACKGROUND

In 2007, Pacific Power sought a conditional use permit from the City of Redmond to upgrade an existing transmission line by replacing existing poles, adding an additional 12,470 volt distribution line, and adding an additional new transmission line to the existing transmission line (the project). Redmond did not request or require the company to undertake the project, but made issuance of the permit contingent upon undergrounding the entire distribution system, both existing and new lines.

The company's costs to install the underground distribution facilities for the project totaled \$206,717. Through a local municipal exaction, Pacific Power sought to recover undergrounding costs of \$102,768 from its Redmond customers, which was the amount Pacific Power identified as costs required to convert only the existing distribution line, plus interest.

In Order No. 12-453, we applied our rule governing forced conversions of electric facilities and rejected the request, stating:

The purpose of [OAR 860-022-0046] is to allow recovery from local residents the costs the utility would not have otherwise incurred but for a requirement of a local government to convert overhead facilities. Thus, when a project is undertaken by the company involving changes to overhead plant, the incremental cost to the project due to a local government forced undergrounding is what rightfully should be recovered from the local ratepayers. When that project includes an integration of existing and new construction, we examine the project as a whole.¹

We ordered further proceedings to obtain evidence regarding the incremental cost of the project due to government action.

On January 22, 2013, Pacific Power and Redmond jointly filed an application for reconsideration of our order. No party filed a response to the application. With the concurrence of Pacific Power, we further suspended Advice No. 12-007 until May 24, 2013.²

III. DISCUSSION

A. Legal Standard

ORS 756.561(1) authorizes a party to request reconsideration of any order within 60 days of service. We may grant reconsideration “if sufficient reason therefor is made to appear.” OAR 860-001-0720(3)(c) further provides that we may grant reconsideration if the applicant establishes “[a]n error of law or fact in the order which is essential to the decision[.]”

B. Positions of the Parties

Pacific Power and Redmond make three arguments in support of its request for reconsideration. First, they contend we made an error of law because the order:

erroneously applied the Rule by including in the recoverable costs amounts attributable to new—as opposed to “converted”—facilities. This application of the Rule is contrary to its plain language, as well as [Pacific Power]’s tariff. In addition, there is good cause to reconsider the order because it contemplates a cost calculation based on the “original plan of constructing the overhead facilities as first presented by the company in its permit request,” information that does not exist and does not reasonably reflect the costs recoverable from customers in the City of Redmond under the Rule.³

¹ Order No. 12-453 at 7 (Nov 21, 2012).

² Order No. 13-028 (Jan 31, 2013).

³ Application for Reconsideration at 2 (footnote omitted) (Jan 22, 2013).

Thus, they believe that the language of the rule precludes us from addressing any of the costs associated with new construction ordered to be undergrounded by a municipality.

Second, the applicants argue that our order is inconsistent with its tariffs governing the undergrounding of facilities. The parties argue that its tariff cannot apply to new construction without violating ORS 757.225, which requires it to collect charges in accordance with its approved tariff schedules, as well as ORS 757.310(1), which requires the company to charge customers according to the prescribed tariff schedules.

Finally, applicants assert that our order contained an error of fact because there is no reliable estimate of what the overhead construction plan costs would have been. They explain that there can be a wide variation between a projected cost and the actual result and cite the significant difference between the \$50,000 estimated cost of conversion of existing facilities contained in a January 2008 report and the final \$102,768, allocated to the existing facilities when the construction had been completed.

C. Resolution

Although Pacific Power and Redmond speak of “the plain language” of our rule governing forced conversion of electric facilities, the rule is not without ambiguity. There is, with no readily apparent explanation, a conflict in the language between the defined terms and their application in other sections. The rule posits a distinction between definitions for “convert,” in terms of “facilities,” and the definition of “conversion cost” in terms of “systems.” The rule discusses the mandated moving of existing *facilities*, but then, for purposes of calculating the conversion *cost*, states:

“Conversion cost” means the difference in cost between constructing an underground *system* and retaining the existing overhead *system*.⁴

In this instance, Pacific Power had proposed making additions to the existing overhead system. That system, absent government intervention, would have remained, by definition, an overhead system and have had particular costs associated with maintaining that overhead system while providing adequate service. Thus, the “conversion cost” under the rule’s language could reasonably have been interpreted as the difference (that is, the incremental cost) between the originally proposed overhead system project and the mandated undergrounded system.

After further examination of this issue, however, we now agree with Pacific Power and Redmond that OAR 860-022-0046 applies only to the mandated underground conversion of existing overhead facilities, and not to costs required by the underground placement of new facilities. During the original rulemaking proceeding, a Hearings Officer issued a proposed order that addressed initial comments to the proposed rule. In that proposed order, which has not been cited by any of the parties, the Hearing Officer amended the proposed rule to limit the definition of conversion to costs to exclude those required for

⁴ OAR 860-022-0046(2)(emphasis added).

increased capacity. Under a section titled "Modifications to the proposed Rule," he stated:

Definitions (Section 1) : (1)(b) "Conversion cost": The opponents were concerned that the proposed rule would require allocation of costs for a simple relocation of facilities or the extra cost of increased capacity. The definition of "conversion costs" is changed to specifically delete those items. Relocation costs, and increased capacity costs, will still be spread among all ratepayers.⁵

At page six of Order No. 84-615, the Commission adopted the Hearing Officer's recommended findings, opinion, and conclusions of the proposed order in Appendix A. In so doing, the Commission, without specific comment, adopted the limited interpretation of conversion costs noted above.

We find this rulemaking history to be compelling context for the interpretation of OAR 860-022-0046. In light of that history, we find that the final \$102,768, allocated to the existing facilities when the construction had been competed was proper and that the associated tariff, excluding the interest payment calculations as noted in our order, is correct.

Our decision in this case is based on our interpretation of the current rule language as informed by our review of the relevant rulemaking history. We direct our Staff to examine whether our rule should be modified to expand the type of costs incurred by a utility when required to underground new or existing facilities due to municipal or other governmental entity action.

IV. ORDER

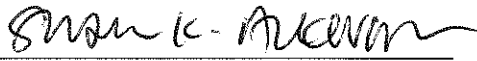
IT IS ORDERED that:

1. The Application for Reconsideration filed jointly by PacifiCorp, dba Pacific Power, and the City of Redmond to reconsider and modify our Order No. 12-453, entered November 21, 2012, is granted to the extent indicated.
2. PacifiCorp, dba Pacific Power, shall file tariffs reflecting the findings in this order with an effective date no later than April 1, 2013.
3. Advice No. 12-007 is permanently suspended and this docket is closed.

⁵ Order No. 84-615, Appendix A at 5.

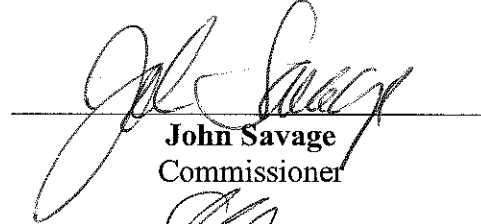
4. The Staff of the Public Utility Commission of Oregon shall review the language of OAR 860-022-0046 to determine whether a rulemaking proceeding should be opened to investigate possible modifications to the rule.

Made, entered, and effective MAR 14 2013.

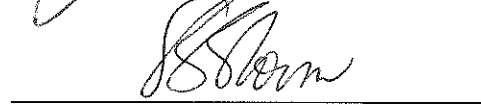


Susan K. Ackerman
Chair





John Savage
Commissioner



Stephen M. Bloom
Commissioner

A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.