

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of PACIFICORP,)	
dba Pacific Power & Light,)	DOCKET NO. UE-001734
Revision to Tariff WN U-74)	
(Advice No. 00-010))	MOTION FOR LEAVE TO
)	SUBMIT RESPONSE
)	TESTIMONY OF THE
)	INDUSTRIAL CUSTOMERS OF
)	NORTHWEST UTILITIES
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In accordance with WAC § 480-09-425, Industrial Customers of Northwest Utilities (“ICNU”) submits this Motion for Leave to Submit Response Testimony (“Motion”). ICNU respectfully requests that the Washington Utilities and Transportation Commission (“WUTC” or “Commission”) provide Staff, Public Counsel and Intervenors the opportunity to submit additional response testimony by July 15, 2002.

BACKGROUND

On November 9, 2000, PacifiCorp submitted to the WUTC proposed tariff sheets seeking to recover net removal costs from customers (“Tariff Revision”). If approved, the Tariff Revision would allow PacifiCorp to charge a customer the costs of removing PacifiCorp’s utility property from the customer’s locations when that customer changes utility service from PacifiCorp to another utility.

On May 4, 2001, Administrative Law Judge (“ALJ”) Caillé issued the Prehearing Conference Order adopting a procedural schedule, invoking the discovery rule, and granting ICNU’s Petition to Intervene. The Columbia Rural Electric Association (“CREA”) was

subsequently granted limited party status. Re PacifiCorp, Second Supp. Order (July 9, 2001) at 1. The procedural schedule provided, *inter alia*: 1) PacifiCorp direct testimony on May 11, 2001; 2) Staff, Public Counsel and Intervenor response testimony on July 2, 2001; 3) PacifiCorp rebuttal testimony on July 27, 2001; 4) evidentiary hearings on August 16-17, 2001; and 5) a Commission Order on November 20, 2001. PacifiCorp submitted direct testimony on May 11, 2001, Commission Staff submitted rebuttal testimony on July 2, 2001, and CREA submitted response testimony on July 3, 2001. The record does not contain any testimony reflecting customer interests because ICNU and Public Counsel did not submit response testimony. ICNU's active participation in settlement negotiations in the end of June and beginning of July impacted its decision not to submit response testimony.

On July 26, 2001, PacifiCorp submitted a Motion to Amend the Prehearing Conference Order and hold in abeyance further proceedings ("PacifiCorp's Motion"). PacifiCorp has not submitted response testimony. Over the objection of ICNU, the Commission granted PacifiCorp's Motion, and suspended the procedural schedule until May 21, 2002. Re PacifiCorp, Third Supp. Order (Aug. 10, 2001); Re PacifiCorp, Notice of Further Extension of Procedural Schedule (Feb. 15, 2002).

On July 30, 2001, PacifiCorp submitted an Application for an interim service territory agreement ("PacifiCorp Application"). On August 10, 2001, the Commission approved PacifiCorp's Application and approved an interim service territory agreement Re PacifiCorp, Third Supp. Order (Aug. 10, 2001). Over the following nine months, the customers taking service from PacifiCorp and CREA were preventing from exercising their competitive options to choose their electric service provider. On May 17, 2002, CREA provided notice to PacifiCorp

and the Commission that the Interim Service Territory Agreement would be terminated June 1, 2002. Letter to Mathew Wright, PacifiCorp from Thomas Husted, CREA Chief Executive Officer of May 17, 2002.

On May 30, 2002, ALJ Caillé held a scheduling teleconference to establish a new procedural schedule and attend to procedural matters. ALJ Caillé adopted a procedural schedule providing that, *inter alia*: 1) a discovery cut-off on previously submitted testimony on July 1, 2002; 2) PacifiCorp rebuttal testimony on August 21, 2002; 3) evidentiary hearings on September 19-20, 2002; and 4) an anticipated Commission Order on November 27, 2002. Re PacifiCorp, Fourth Supp. Order (June 5, 2002) at 3. ALJ Caillé noted that ICNU would review the record to determine whether it would file a motion to submit additional Staff and/or Intervenor testimony. Id. at 2.

ARGUMENT

ICNU requests the opportunity for Staff, Public Counsel and Intervenors, including ICNU, to submit additional testimony. Intervenor CREA supports, and Public Counsel does not oppose, ICNU's Motion. PacifiCorp and Commission Staff stated that they intend to oppose the Motion. ICNU proposes that the Commission provide Staff and Intervenors the right to submit additional testimony by July 15, 2002. The procedural history of this proceeding is long and drawn out, including a ten-month effective stay from July 26, 2001, to May 30, 2002. This delay warrants a re-evaluation of the proceeding and an opportunity to file additional testimony by Staff and/or Intervenors. Furthermore, the ability to file additional testimony will allow the Commission to review a full and complete administrative record and will not affect the substantial rights of any party.

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1. Good Cause Exists to Allow Additional Rebuttal Testimony

The Commission rules do not address the issue of submitting additional testimony. The Commission has previously determined that it retains the discretion to consider additional or late-filed testimony if good cause has been shown. *See, e.g., WUTC v. Puget Sound Power & Light Co.*, Cause No. U-85-19, Second Supp. Order (May 23, 1985). Additional testimony should be allowed if it assists the Commission in upholding its duties of protecting customers and regulating in the public interest. RCW § 80.01.040(2), (3); *Cole v. WUTC*, 79 Wash. 2d 302, 306 (1971). The Commission’s procedural rules reflect this broad mandate by requiring the Commission to liberally construe all pleadings “with a view to effect justice among the parties.” WAC § 480-09-4254.

The over ten-month delay in the procedural schedule and expired interim service territory agreement constitute good and sufficient cause to permit additional response testimony. Over the past year the factual circumstances, especially regarding the impact of the interim service territory agreement, have changed and necessitate the ability to file additional testimony. In addition, over the past year the parties’ status and positions have shifted so that additional testimony may be necessary for the Commission to properly review PacifiCorp’s Tariff Revision and the positions of all parties in this proceeding.

The new procedural schedule recognizes that this proceeding should not immediately re-start at the point that the Commission granted the stay. For example, PacifiCorp requested the stay one day before its rebuttal testimony was due on July 27, 2001. However, PacifiCorp has been allowed to submit its rebuttal testimony on August 21, 2002, three months from May 21, 2002, the date the stay ended. Including the ten-month stay, the new procedural

schedules allows PacifiCorp over a year to review the originally filed Staff and Intervenor response testimony and prepare its own rebuttal testimony. The new procedural schedule also benefits CREA by providing an additional month to respond to Commission Staff and PacifiCorp discovery requests. PacifiCorp itself has admitted that it is proper for the new procedural schedule to reflect the ten-month stay and has agreed to waive the statutory suspension period to accommodate the hearing schedule. Re PacifiCorp, Fourth Supp. Order (June 5, 2005) at 3. The unusual and protracted procedural schedule in this proceeding warrants the ability to file additional testimony by Staff, Public Counsel and Intervenors.

2. No Party's Substantive Rights Will be Harmed By Additional Response Testimony

Providing Staff, Public Counsel and Intervenors an opportunity to file additional response testimony will not harm the substantial rights of any party and will assist the development of a full and complete record. Administrative proceedings must not unduly limit the submission of evidence and must provide parties the right to a fair and open hearing. Puget Sound Navigation Co. v. Dept. of Transportation, 33 Wash. 2d 448, 486-87, 206 P.2d 456, 477 (1949). The Commission rules provide that “[t]he Commission will, at every stage of any proceeding, disregard errors or defects in the pleadings or proceeding that do not affect the substantial rights of the parties.” WAC § 480-09-425(4).

No party's substantial rights will be harmed by granting ICNU's Motion. Authorizing additional testimony will not prevent or limit any party's ability to conduct discovery or submit testimony. ICNU's request will not delay the proceeding. The original procedural schedule provided PacifiCorp with three and a half weeks to review and conduct discovery on Staff, Public Counsel and Intervenor response testimony. Re PacifiCorp,

Prehearing Conference Order (May 4, 2001). If the Commission grants ICNU's request to submit testimony on July 15, 2002, PacifiCorp will have over one month to review and conduct discovery on the testimony. Therefore, authorizing additional testimony will allow parties more opportunity to conduct discovery than under the original procedural schedule.

CONCLUSION

ICNU respectfully requests that the Commission grant ICNU's Motion for Leave to Submit Response Testimony. To ensure a complete and adequate record for the Commission's review, the parties should have the time and opportunity to review the current record, conduct thorough discovery, and, if necessary, submit additional testimony. In addition to benefiting the public interest, granting ICNU's Motion will harm no party.

DATED this 6th day of June, 2002.

Respectfully submitted,

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