

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	DOCKET NO. UE-001734
)	
Complainant,)	FIFTH SUPPLEMENTAL ORDER
)	DENYING MOTION FOR LEAVE
v.)	TO FILE TESTIMONY
)	
PACIFICORP, d/b/a PACIFIC POWER)	
& LIGHT,)	
)	
Respondent.)	
.....)	

I. SYNOPSIS

1 This order denies ICNU's request for leave to file testimony after the deadline for filing because ICNU has not shown any change in fact or circumstance that would warrant a second opportunity to file testimony in light of ICNU's decision to forego filing testimony at the time it was due.

II. MEMORANDUM

2 **Proceeding:** Docket No. UE-001734 is a tariff revision (Proposed Tariff Revision) filed on November 9, 2000, by PacifiCorp d/b/a Pacific Power & Light (PacifiCorp) that would allow PacifiCorp to charge a customer the costs associated with removing PacifiCorp's utility property from the customer's location when the customer changes utility service providers. The Commission suspended the Proposed Tariff Revision pending hearing or hearings concerning such changes and the justness and reasonableness thereof.

3 **Parties:** James C. Paine, Stoel Rives LLP, Portland, Oregon, represents PacifiCorp. Don Trotter, Assistant Attorney General, Olympia, Washington, represents Staff of the Washington Utilities and Transportation Commission (Staff). Robert Cromwell, Assistant Attorney General, Seattle, Washington, represents Public Counsel. Irion Sanger, Davison Van Cleve, P.C., Portland, Oregon, represents Industrial Customers of Northwest Utilities (ICNU). Michael V. Hubbard, Hubbard Law Office, Waitsburg, Washington represents Columbia Rural Electric Association (CREA).

- 4 **Procedural History:** On May 1, 2001, the Commission held a prehearing conference, and established a procedural schedule for prefiled testimony and exhibits, evidentiary hearings, and briefs. The Commission's May 4, 2001, Prehearing Conference Order formally set forth the procedural schedule.
- 5 On July 27, 2001, PacifiCorp filed a motion to amend the prehearing conference order and to hold in abeyance further process in this docket until December 31, 2001. PacifiCorp requested suspension of the procedural schedule because PacifiCorp and CREA had entered into an interim service area agreement and executed a Memorandum of Understanding that set forth the framework for negotiating a permanent service territory agreement. The Commission granted PacifiCorp's motion to amend the prehearing conference order. *Third Supplemental Order Amending Prehearing Conference Order and Suspending Procedural Schedule Until December 31, 2001 (August 10, 2001)*. The Commission approved the interim service territory agreement in Docket No. UE-011085, and appointed a mediator to facilitate negotiation of a permanent service territory agreement.
- 6 PacifiCorp requested further suspension of the procedural schedule to January 31, 2002, and again to May 15, 2002, in order for PacifiCorp and CREA to continue negotiations. The Commission granted the requests, ordered a status report on February 22, 2002, and a status conference on May 21, 2002.
- 7 PacifiCorp and Commission Staff appeared at the May 21, 2002, status conference. PacifiCorp informed the Commission that the parties were unsuccessful in reaching agreement on a permanent service territory agreement. PacifiCorp asked that the Commission re-establish a procedural schedule for this proceeding.
- 8 On May 30, 2002, the presiding Administrative Law Judge initiated a teleconference to establish a procedural schedule. Representatives of PacifiCorp, CREA, ICNU, Public Counsel, and Commission Staff participated in the teleconference. The Commission reinstated a procedural schedule from the point the proceedings were suspended in August 2001. As of August 2001, the Company had filed its direct testimony, and Staff and CREA had filed response testimony. ICNU and Public Counsel did not file response testimony by the due date, July 2, 2001. ICNU requested a week to review the record to determine whether it would file a motion to allow additional Staff/Intervenor testimony. Public Counsel supported ICNU's request. PacifiCorp and Commission Staff represented that that they would oppose a motion for additional testimony.
- 9 On June 7, 2002, ICNU filed a motion requesting leave to submit response testimony by July 15, 2002. CREA joins in and supports ICNU's request. Public Counsel supports ICNU's motion and believes the record may benefit from supplementation. Public Counsel did not join in the motion because Public Counsel does not desire to file testimony. Commission Staff and PacifiCorp oppose the motion.

III. DISCUSSION AND DECISION

- 10 **ICNU's position.** ICNU alleges that the 10-month stay of the proceedings to accommodate negotiations and the expired interim service territory agreement constitute good and sufficient cause to permit additional response testimony. ICNU contends that over the past year the factual circumstances, especially regarding the impact of the expired interim service territory agreement, have changed and necessitate the opportunity to file additional testimony. ICNU further contends that over the past year the parties' status and positions have shifted so that additional testimony may be necessary for the Commission to properly review the tariff revision and the parties' positions. According to ICNU, granting the motion will not prejudice the parties because it will not prevent or limit any party's ability to conduct discovery or submit testimony. The request will not delay the proceeding. 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 before the due date for PacifiCorp's rebuttal testimony on August 21, 2002.
- 11 **Commission Staff's response.** Staff argues that ICNU made an informed tactical decision not to file testimony a year ago. Staff points out that ICNU offers two vague and unsupported allegations in support of its request for leave to file testimony. According to Staff, ICNU fails to provide a single specific change in any factual circumstance. Staff asserts that ICNU's reference to the "impact of the interim service territory agreement" is an ambiguous reference to an apparent irrelevancy. The interim service territory agreement is no longer in effect. ICNU offers no facts and no reasons why an expired interim service territory agreement has any relevance to this case. Moreover, ICNU fails to identify the parties who have shifted status and positions, fails to state facts identifying the cause of the shift, when the shift occurred, what the parties' positions and status were before and after the shift, and why the shift prevented those parties from the timely filing of testimony. Contrary to ICNU's assertion that granting its Motion will not prejudice anyone, Staff maintains that granting the motion based on unsupported, vague allegations, is inherently prejudicial.
- 12 **PacifiCorp's response.** PacifiCorp's arguments in opposition to ICNU's request are similar to those of Staff. In addition, PacifiCorp looks to ICNU's petition to intervene to determine the basis for ICNU's participation in this proceeding, given the absence of testimony on behalf of ICNU. ICNU cites policy implications of the tariff in general based on the tariff's potential to create stranded costs for ICNU members, and concern about the vagueness of the tariff language in support of its intervention in this proceeding. According to PacifiCorp the latter is the focus of Staff's testimony. PacifiCorp contends that the policy issues are not fact-based and do not require the filing of testimony. PacifiCorp suggests that ICNU may adequately address its position on these policy issues in briefs to the Commission.

13 ***Commission's decision.*** ICNU has failed to advance any specific, relevant change in facts or circumstances that would warrant a second opportunity to file testimony. ICNU had the same opportunity as Staff, CREA, and Public counsel to file testimony. The mere passage of time does not constitute a "changed circumstance" that would benefit the record by another round of testimony. Similarly, ICNU fails to support its contention of a shift in parties' status and positions. Based on ICNU's petition to intervene, ICNU's interests in this proceeding appear to be policy-based and appear capable of adequate expositions in its brief rather than through testimony. Accordingly, we deny ICNU's motion.

DATED at Olympia, Washington, and effective this day of July, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner