

Agenda Date: October 24, 2001

Item No.: 2B

Docket: UE-011085

Company Name: PacifiCorp

Staff: Hank McIntosh, Regulatory Consultant, Energy

Recommendation

Approve the application of PacifiCorp for Interim Service Territory Agreement (ISTA).

Background

PacifiCorp is a state-regulated electric utility serving several states including Washington. In Washington it serves Columbia, Garfield, Kittitas, Walla Walla, and Yakima counties. Columbia Rural Electric Association (CREA) is a cooperative which provides electric service in Walla Walla and Columbia counties in Washington State.

There has been no long-term service territory agreement between CREA and PacifiCorp. Growth has brought new loads into areas which both companies could serve. Also, the city of College Place has offered electric service franchises to both providers. Thus, there has been ambiguity regarding PacifiCorp's service obligation. This caused the companies to compete for existing customers as well as new ones.

In turn, this allegedly caused a duplication of investment and possible operational and public safety issues which were expressed in a filing before the WUTC by PacifiCorp in Docket No. UE-001734. That docket is a tariff filing in which PacifiCorp seeks to assess charges for the net cost of removal of facilities when customers leave its system permanently. That tariff filing was suspended and set for hearing. It was later placed in abeyance until December 31, 2001, since a long-term service territory agreement was anticipated by then.

The matter before the Commission now, Docket No. UE-011085, can be viewed as a "bridge" to that long-term service area agreement. PacifiCorp has signed an interim service territory agreement (ISTA), subject to Commission approval, that would last until December 31, 2001, in order for a permanent service territory agreement (STA) to be negotiated. PacifiCorp requests approval of its participation in the ISTA as a first step in the negotiation of permanent agreement.

Service territory agreements, while apparently anti-competitive, serve the public interest in that they reduce duplicative investment in electric distribution property and reduce the chances of public safety concerns. The public policy supporting such agreements is expressed in RCW 54.48. In general, service territory agreements are immune from antitrust laws if the agreement is subject to regulation by a State agency such as the WUTC. Legal research supporting this view can be found in the attached memo (Attachment A) from Donald Trotter, Assistant Attorney General, to Lisa Steel and Hank McIntosh of WUTC Staff.

PacifiCorp and CREA Proposal

The ISTA, which is part of a memo of understanding between PacifiCorp and CREA, requires that upon approval by the Commission, each utility will continue to provide electric service to currently served customers and each utility will not serve the other's customers. CREA also agrees that it will not request any new electric distribution franchise rights. CREA and PacifiCorp have committed to a goal of submitting a long-term service territory agreement by December 31, 2001. In its Application, PacifiCorp invites the Commission to provide supervision of the negotiation process.

Comments of ICNU

ICNU has commented at length in a letter filed with the Commission. PacifiCorp has filed a letter in response. Staff is advised by Donald Trotter, Assistant Attorney General, that the legal challenges posed in ICNU's comments are not well founded. (See Attachment A.)

Besides the legal arguments, ICNU makes a request that it be allowed to supply a representative to the negotiations to protect the interests of its constituency, industrial consumers.

Summary

Staff believes approval of the ISTA is in the public interest and within the authority of the WUTC to approve. It is apparent that no law or precedent forbids anything in the form or substance of the ISTA and the Application. Further, it seems clear that exercising their opportunity for comment and participation in the Commission decision to adopt the final agreement, when and if it is filed can protect the interests of ICNU.

Conclusion

Staff recommends approval of the application of the ISTA in this docket. Regarding PacifiCorp's request for Commission assistance in the negotiating process, Staff takes no position because the resource decision would draw on other divisions of the agency. Staff is indifferent to the participation of ICNU in the negotiation process.