

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

1 **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.

2 **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).

3 **Motion To Strike:** On August 23, 2002, PacifiCorp filed a motion to strike the testimony of CREA's witness, Thomas H. Husted. PacifiCorp alleges that statements made in Mr. Husted's prefiled testimony are not relevant to the merits of PacifiCorp's proposed tariff changes and/or involve assertions that are beyond the Commission's jurisdiction.

4 PacifiCorp cites *Cole v. WUTC*, 79 Wn.2d 302 (1971) and argues that the effect of PacifiCorp's retail rates on CREA's operations and on competition for retail customers is beyond the Commission's jurisdiction and should not be considered in assessing PacifiCorp's proposed charges for removal of distribution facilities at a customer's locale.

5 According to PacifiCorp, the proposed tariff revision should be assessed on whether the proposal is just, fair, reasonable and sufficient, and whether it is in PacifiCorp customers' public interest.

6 Commission Staff agrees with PacifiCorp that CREA's proposed testimony is irrelevant. In addition, Commission Staff argues that CREA's testimony is beyond the limited scope of CREA's intervention, and contains inadmissible argument and speculation.

7 CREA argues that Mr. Husted's testimony responds directly to the testimony of Mr. Clemens. In response to PacifiCorp's reliance on *Cole*, CREA notes that the Commission disagreed with PacifiCorp and Commission Staff that the *Cole* decision controlled the Commission's decision on CREA's intervention in this proceeding. CREA argues that the same public interest reasoning used by the Commission in granting CREA's petition to intervene would support denial of PacifiCorp's motion to strike. According to CREA, PacifiCorp's motion seeks to put the Commission in the position of deciding this application in a vacuum. CREA maintains that such a position would be contrary to the Commission's express recognition that:

PacifiCorp's proposal occurs not in isolation but in the context of potential competition among neighboring utilities. PacifiCorp's customers, whether potential migrants from PacifiCorp or the customers who don't migrate to another utility, are affected by this broader context. In this proceeding, CREA's participation may help us to determine the effects of the Proposed Tariff Revision on the customers, which we find to be in the public interest.¹

¹ *WUTC v. PacifiCorp*, Docket No. UE-001734, July 9, 2001, Second Supplemental Order (Second Supplemental Order) at paragraph 33.

8 ICNU argues that PacifiCorp's motion should be denied because it 1) reargues issues already decided by the Commission in its *Second Supplemental Order*, 2) is untimely because the motion was filed more than one year after CREA submitted Mr. Husted's testimony, 3) challenges testimony that responds directly to issues raised by PacifiCorp, and 4) would restrict the Commission's analysis of the greater impacts of PacifiCorp's proposal.

Discussion and decision.

9 PacifiCorp's Motion to Strike Mr. Husted's testimony is denied. In its *Second Supplemental Order*, the Commission rejected arguments of PacifiCorp and Commission Staff that the *Cole* decision barred CREA's intervention in this proceeding. The Commission noted that the *Cole* decision was based on a finding that the intervenor had no interest jurisdictional to the Commission. Here, the Commission allowed CREA limited intervention under the alternative "public interest" test which was not addressed in *Cole*. The Commission observed that:

This alternative ground for intervention is broader in nature, turning not on the would-be intervenor's right to intervene, but rather on the Commission's needs to make a full and fair determination consistent with the public interest.²

10 The Commission found that it was consistent with the public interest to allow CREA to intervene to address 1) whether the proposed tariff charges are an unlawful restraint of trade, restricting competition and customer choice in contravention of law and policy, and 2) to contest the factual contentions about CREA in PacifiCorp's testimony.³

11 PacifiCorp's reliance on *Cole* and its reiteration of the jurisdictional arguments presented in opposition to CREA's intervention ignore the Commission's basis for allowing the intervention of CREA. The Commission found that the tariff proposal must be analyzed in the broader context of its effects on competition to determine whether the tariff is in the public interest. The Commission also concluded that

² *Id.* at paragraph 31.

³ *Id.* at paragraphs 28 and 33.

“CREA’s participation may help the Commission to determine the effects of the proposed tariff revision on customers, which we find to be in the public interest.”⁴

12 The testimony of Mr. Husted falls within the limited parameters of CREA’s intervention. CREA has demonstrated that Mr. Husted’s testimony is responsive to the direct testimony of Mr. Clemens. Mr. Husted contests factual allegations in Mr. Clemens’ testimony. Moreover, Mr. Husted’s testimony is relevant in that it suggests an impact of the proposed tariff on customers and competition in Washington. Ultimately, in reviewing the evidence in this proceeding, the Commission will accord Mr. Husted’s testimony the appropriate weight.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

KAREN M. CAILLÉ
Administrative Law Judge

⁴ *Id. at paragraph 33.*