

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION,	)	DOCKET NO. UE-001734
	)	
Complainant,	)	COMMISSION STAFF'S
	)	ANSWER TO PACIFICORP'S
v.	)	MOTION TO AMEND
	)	PREHEARING CONFERENCE
PACIFICORP,	)	ORDER AND HOLD IN
	)	ABEYANCE FURTHER
Respondent.	)	PROCESSING OF DOCKET
	)	UNTIL DECEMBER 31, 2001
_____	)	

1. The Commission Staff answers the "Motion to Amend Prehearing Conference Order and Hold in Abeyance Further Processing of Docket Until December 31, 2001," ("Motion to Amend") filed by PacifiCorp on July 27, 2001. The mailing address of the Commission is: 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250.
2. Rules involved include WAC 480-09-440. Statutes involved include chapter 54.48 RCW and RCW 80.04.130.

**BACKGROUND**

3. This proceeding was initiated by a tariff filing by PacifiCorp to impose a charge for the net cost of removal of certain facilities serving a PacifiCorp customer who elects to be served by another electric utility. The tariff bears an effective date of December 13, 2000. The operation of the tariff was suspended by the Commission by order dated November 29, 2000. The

matter was set for hearing. PacifiCorp earlier agreed to waive the statutory suspension period to accommodate the hearing schedule established in the Prehearing Conference Order (May, 4, 2001).

4. Pursuant to the Prehearing Conference Order, the direct evidence of the parties has been filed. PacifiCorp was required to file its rebuttal case by July 27, a second prehearing conference is to be held on August 10, and hearings are set for August 16-17, 2001.

#### **PACIFICORP'S MOTION**

5. PacifiCorp moves to amend the Prehearing Conference Order and seeks an order holding in abeyance until December 31, 2001 further proceedings in this docket. PacifiCorp agrees to waive the suspension period for an additional 5 months.
6. PacifiCorp states the reason for the motion is that PacifiCorp and Columbia REA have entered into an interim service area agreement (subject to Commission approval per RCW 54.48) and a Memorandum of Understanding ("MOU") setting forth the framework under which those parties will attempt to negotiate a permanent service area agreement. The interim agreement and MOU were filed on July 30, 2001, and assigned Docket No. UE-011085.<sup>1</sup> (Official notice of those two documents is requested for purposes of this Answer).
7. PacifiCorp contends the MOU "offers the possibility of settlement of all contested issues associated with this proceeding." (Motion to Amend at 2).

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<sup>1</sup> The position staff takes here is based on a preliminary review of the documents filed in Docket UE-011085.

### **STAFF'S RESPONSE TO THE MOTION**

8. PacifiCorp's stated reason for the tariff filing in this docket was the advent of multiple electricity providers in certain areas located in certain parts of Eastern Washington served by PacifiCorp. Staff has been aware that both PacifiCorp and Columbia REA were interested in pursuing discussions regarding a possible service area agreement. Should a permanent service area agreement be entered into and approved, the stated reason for the tariff is eliminated.
9. Staff supports the Motion to Amend for three reasons. First, Staff agrees with PacifiCorp that should the result of Docket No. UE-011085 be an approved service area agreement, that could effectively moot the issues in Docket UE-001734. If so, the tariff would likely be withdrawn and/or the docket dismissed. Second, absent a service area agreement, there is a likelihood of persistent litigation involving the situation that currently exists. Third, it is probable that a service area agreement will be in the best interests of ratepayers, and consistent with the policies stated in 54.48 RCW. Accordingly, it makes sense to permit PacifiCorp and Columbia REA to try to resolve the issues between them through negotiation, subject to the Commission's approval where required.
10. Staff supports the Motion to Amend with three qualifications:

- a) The MOU states that a Commission representative will be “invited to attend all subsequent meetings [between PacifiCorp and Columbia REA regarding the service area agreement] to actively review and supervise the process.” (*See also* Motion to Amend at 3, item B). Staff understands this is necessary (in PacifiCorp’s view, at least) to address potential anti-trust concerns. Staff does not oppose the concept of what is requested here, so long as the Commission has the resources to contribute to this process, and that the parties understand the Commission representative does not have authority to bind the Commission to a particular form of agreement. The ultimate decision rests with the Commission on whether to approve a particular service area agreement.
- b) The second condition is that Staff’s support for the motion does not necessarily convey Staff support for any particular form of service area agreement that may be negotiated. The Motion to Amend refers to the potential for agreement in 5 stated areas (Motion to Amend at 2-3, item 2A). The scope of Items 1, 4 and 5 is not particularly clear. (For example, item 5 implicates among other things, the Commission’s transfer of property statutes). Staff does not oppose discussions in any of these general areas, so long as it is understood that granting the motion does not mean support for any particular result on any subject which PacifiCorp and Columbia REA propose to discuss.

c) PacifiCorp agrees to “[waive] the suspension period for an additional five months, through calendar-year 2001” (Motion to Amend at 3). To preserve the *status quo*, this agreement should be interpreted to mean that if negotiations fail, the Commission will have 3 months and 25 days after December 31, 2001 to resolve the instant docket. (That is the same amount of time the Commission now has to resolve the instant docket after July 27, 2001, should it deny the Motion to Amend).

### CONCLUSIONS

11. For the reasons stated above, the Motion to Amend should be granted, subject to the three conditions stated in paragraph 10 above.

DATED this 1st day of August, 2001.

Respectfully submitted,

CHRISTINE O. GREGOIRE  
Attorney General

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