

Decision 99-10-049 October 21, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of PACIFICORP
for the Issuance of a Limited Exemption from the
Affiliate Transaction Rules Adopted in
D.97-12-088. (U 901 E)

Application 99-03-071
(Filed March 30, 1999)

**OPINION ON PACIFICORP'S APPLICATION
FOR A LIMITED EXEMPTION FROM THE
AFFILIATE TRANSACTION RULES**

Summary

By this application, PacifiCorp seeks a limited exemption from the Commission's Affiliate Transaction Rules, adopted in Decision (D.) 97-12-088, and modified in D.98-08-035. This decision grants the application in all respects, except that it grants a more limited exemption to Rule IV.C of the Affiliate Transaction Rules than PacifiCorp requested in its application.

Background

On March 30, 1999, PacifiCorp filed this application which is unopposed.¹ PacifiCorp provides retail electric distribution services to customers in parts of

¹ D.99-05-023 granted PacifiCorp's motion to withdraw an earlier similar application without prejudice. In the proceeding which led to the issuance of D.99-05-023, all parties agreed that it would be inefficient to process this application because PacifiCorp stated that it was involved in bid negotiations regarding the sale of its California distribution facilities. In its motion to withdraw the application, PacifiCorp stated that because of the delays encountered in the sale, the Commission may face problems in meeting the time limits to process the application. Therefore, PacifiCorp sought withdrawal of its application after the Commission received and assigned a docket to

Footnote continued on next page

six states: California, Idaho, Oregon, Utah, Washington, and Wyoming.

PacifiCorp serves approximately 40,000 retail customers in California. Since the filing of this application, the Commission issued D.99-06-049, which granted PacifiCorp and Scottish Power plc's request for an exemption from the approval requirements of Pub. Util. Code § 854 for the merger of an indirect, wholly owned subsidiary of Scottish Power into PacifiCorp and Scottish Power's subsequent exercise of control over PacifiCorp. D.99-06-049 also stated that the merger may take effect once various conditions are satisfied and all required regulatory approvals are obtained. The merger should not affect this application because the transaction does not contemplate any change in the operation of PacifiCorp's California properties, and does not contemplate the sale of PacifiCorp's generation, transmission, or distribution assets.

In August 1999, PacifiCorp filed Application (A.) 99-08-036 requesting Commission approval for PacifiCorp to sell to Nor-Cal Electric Authority all distribution and certain transmission assets, as well as permits and other authorizations currently used to provide electric distribution service to PacifiCorp's customers in its northern California service territory. Assuming *arguendo* that the Commission grants A.99-08-036, this fact may moot, or at least significantly modify PacifiCorp's need to comply with the Affiliate Transaction Rules. However, A.99-08-036 has recently been filed, and it is unclear at this juncture what the result may be, and when the decision addressing the proposed sale will issue. Therefore, it is prudent to act on the instant application in order to ensure PacifiCorp's compliance with the Affiliate Transaction Rules during the

PacifiCorp's new filing seeking a limited exemption from the Affiliate Transaction Rules. The new filing is the application which this decision addresses.

period A.99-08-036 is pending. If the Commission approves A.99-08-036, Nor-Cal Electric Authority will have to comply with the Affiliate Transaction Rules, or seek appropriate exemptions therefrom.

The Requested Exemptions

Rule II.H of the Affiliate Transaction Rules provides for a limited exemption for California utilities which are also multi-state utilities. Rule II.H states:

“Limited Exemption (Application): A California utility which is also a multi-state utility and subject to the jurisdiction of other state regulatory commissions, may file an application, served on all parties to this proceeding, requesting a limited exemption from these Rules or a part thereof, for transactions between the utility solely in its capacity serving its jurisdictional areas wholly outside of California, and its affiliates. The application has the burden of proof.”

In D.97-12-088, *slip op.* at 19, we explained the rationale behind this limited exemption:

“As we state elsewhere in this decision, we are regulating the California utility here, not the affiliate. However, we recognize that in the case of a California utility which is also a multi-state utility and subject to the jurisdiction of other state commissions, the corporate structure of the utility may not be such that utility activities conducted wholly outside of California are separated into a separate corporate entity. Therefore, we provide that such a multi-state utility that is covered by these rules may file an application, served on all parties to this proceeding, requesting a limited exemption from these rules or a part thereof, for transactions between the utility solely in its capacity serving its jurisdictional areas wholly outside of California, and its affiliates. The applicant has the burden of proof. We stress that this is an opportunity for a limited, not wholesale, exemption to these rules.”

PacifiCorp states that it has filed an Advice Letter with the Commission containing a compliance plan describing how it will implement the Affiliate Transaction Rules for its California affiliates. This decision does not address this Advice Letter.

In this application, PacifiCorp undertakes as follows:

1. PacifiCorp, in its capacity as a California utility, will limit its retail activities within California to the provision of tariffed services to its California retail service territory customers.²
2. PacifiCorp will not allocate any costs or revenues from nonutility activities to its California utility operations.
3. PacifiCorp has a limited number of affiliates, as the term is defined in the Affiliate Transaction Rules, engaged in the provision of products that use electricity or the provision of services that relate to the use of electricity that plan to conduct business in California (California affiliates). PacifiCorp has filed a compliance plan with the Commission in the form of an Advice Letter which describes how it will implement the Affiliate Transaction Rules with respect to its California affiliates.
4. Other than its California affiliates, all PacifiCorp affiliates that engage in the provision of products that use electricity or the provision of services that relate to the use of electricity operate wholly outside of California (out-of-state affiliates).
5. PacifiCorp will not permit any new California affiliate or any out-of-state affiliate to conduct business in California unless PacifiCorp provides the Commission and each party to Rulemaking (R.) 97-04-011/Investigation (I.) 97-04-012 with notice of the affiliate's

² PacifiCorp states that it may conduct business with wholesale power purchasers and sellers located in California in PacifiCorp's capacity as a wholesale power purchaser and seller, but states that these activities are subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission. We do not address here whether this fact should have bearing on PacifiCorp's compliance with the Affiliate Transaction Rules with respect to its California affiliates, since this application only addresses compliance with the Affiliate Transaction Rules concerning transactions between PacifiCorp and its out-of-state affiliates.

intent to conduct business in California and an Advice Letter or update to PacifiCorp's compliance plan demonstrating how PacifiCorp will implement the Rules with respect to that affiliate.

Based on the above-listed undertakings, PacifiCorp requests that the Commission grant PacifiCorp a limited exemption from the following provisions of the Affiliate Transaction Rules with respect to transactions between PacifiCorp and its out-of-state affiliates: Rules III.A.1; III.A.2; III.B.2; III.B.5; III.C; III.D; III.E; and III.F (relating to nondiscrimination) (PacifiCorp does not request exemption from the provisions of Rules III.B.1; III.B.3; or III.B.4 because these provisions deal generally with PacifiCorp's conduct toward all market participants rather than specifically with PacifiCorp's conduct toward its affiliates.); Rule IV.C (relating to customer requests for information about service providers); Rule V (relating to separation between utilities and their affiliates that are subject to the Rules); and Rules VI.A and VI.B (relating to filing annual compliance plans and notices of new affiliates under the Rules).

In D.99-02-086, *slip op.* at 10, we exempted transactions between Southwest Gas Corporation and Southwest Gas Transmission Company (SGTC) from the Affiliate Transaction Rules because Southwest Gas Corporation is a multi-state utility and SGTC does not conduct any business activity or transactions within California. We grant PacifiCorp's requested exemptions for its out-of-state affiliates because PacifiCorp is a multi-state utility and has represented that its out-of-state affiliates do not conduct any business activity or transactions within California, and because of PacifiCorp's representations set out above as numbers 1-5. We emphasize that this exemption is for PacifiCorp's out-of-state affiliates only. If the operations of any of PacifiCorp's out-of-state affiliates, or any other circumstances, change from the information provided by PacifiCorp in this application, PacifiCorp should file a Petition for Modification of this decision

justifying why the exemption we grant today should be continued under the new set of circumstances.

We also require PacifiCorp to comply with its statement number 5 above concerning any new California affiliate or out-of-state affiliate which plans to conduct business in California.

With respect to PacifiCorp's requested exemption to Rule IV.C regarding providing customers, upon their request, with a list of service providers, PacifiCorp states that it does not wish to be responsible for maintaining or providing any type of list relating to service providers operating in California. Instead, PacifiCorp agrees that it will refer inquiries to the Commission's web site.

PacifiCorp does not demonstrate why the fact that it is a multi-state utility with some affiliates operating totally outside of California should exempt it from Rule IV.C's requirements regarding California providers of service and products. However, because Rule IV.C requires an Advice Letter filing for approval of a list, or approval of an alternative process such as directing the customer to a generally available listing of service providers (e.g. the Yellow Pages), and because the Advice Letter approval process may take longer than the time it takes to process PacifiCorp's pending application to sell its California retail facilities, we grant PacifiCorp's requested exemption from Rule IV.C until the Commission issues a decision in A.99-08-036. If the Commission denies PacifiCorp's requested relief in A.99-08-036, PacifiCorp should file, or amend its Advice Letter, to comply with Rule IV.C. If the Commission grants A.99-08-036, PacifiCorp's compliance with Rule IV.C should be moot. While A.99-08-036 is pending, PacifiCorp may refer any party inquiring about California energy service providers to the Commission's web site (www.cpuc.ca.gov), or to other generally available listings of service providers (e.g. the Yellow Pages).

In Resolution ALJ 176-3014 dated April 22, 1999, the Commission preliminarily categorized this application as quasi-legislative and preliminarily determined that hearings were not necessary. No party opposes this application. Given this status, it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3014.

The draft decision of Administrative Law Judge Econome in this matter was mailed to the parties and to the service list of the Affiliate Transaction Proceeding, R.97-04-011/I.97-04-012, in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. No party filed comments to the draft decision. We make several minor, non-substantive changes to improve the discussion and correct typographical errors.

Findings of Fact

1. PacifiCorp provides retail electric distribution services to customers in parts of six states: California, Idaho, Oregon, Utah, Washington, and Wyoming.
2. PacifiCorp, in its capacity as a California utility, will limit its retail activities within California to the provision of tariffed services to its California retail service territory customers.
3. PacifiCorp states that it will not allocate any costs or revenues from nonutility activities to its California utility operations.
4. PacifiCorp has a limited number of affiliates, as the term is defined in the Affiliate Transaction Rules, engaged in the provision of products that use electricity or the provision of services that relate to the use of electricity that plan to conduct business in California (California affiliates). PacifiCorp has filed a compliance plan with the Commission in the form of an Advice Letter which describes how it will implement the Affiliate Transaction Rules with respect to its California affiliates.

5. Other than its California affiliates, all PacifiCorp affiliates that engage in the provision of products that use electricity or the provision of services that relate to the use of electricity operate wholly outside of California (out-of-state affiliates).

Conclusions of Law

1. PacifiCorp should be granted a limited exemption from the following provisions of the Affiliate Transaction Rules with respect to transactions between PacifiCorp and its out-of-state affiliates: Rules III.A.1; III.A.2; III.B.2; III.B.5; III.C; III.D; III.E; and III.F; V; VI.A; and VI.B, on the condition that if the operations of any of PacifiCorp's out-of-state affiliates, or any other circumstances, change from the information provided by PacifiCorp in this application, PacifiCorp must file a Petition for Modification of this decision justifying why the exemption we grant today should be continued under the new set of circumstances. Also, PacifiCorp should not permit any new California affiliate or any out-of-state affiliate to conduct business in California unless PacifiCorp provides the Commission and each party to R.97-04-011/I.97-04-012 with notice of the affiliate's intent to conduct business in California and an Advice Letter or update to PacifiCorp's compliance plan demonstrating how PacifiCorp will implement the Rules with respect to that affiliate.

2. PacifiCorp should be granted an exemption from Rule IV.C until the Commission issues a decision in A.99-08-036. If the Commission denies PacifiCorp's requested relief in A.99-08-036, PacifiCorp should file, or amend its Advice Letter, to comply with Rule IV.C. If the Commission grants A.99-08-036, PacifiCorp's compliance with Rule IV.C should be moot. While A.99-08-036 is pending, PacifiCorp may refer any party inquiring about California service

providers to the Commission's web site, or to other generally available listings of service providers (e.g. the Yellow Pages).

3. If the Commission approves A.99-08-036, Nor-Cal Electric Authority must comply with the Affiliate Transaction Rules, or seek appropriate exemptions therefrom.

4. This decision should be effective immediately.

5. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. PacifiCorp is granted a limited exemption from the following provisions of the Affiliate Transaction Rules with respect to transactions between PacifiCorp and its out-of-state affiliates: Rules III.A.1; III.A.2; III.B.2; III.B.5; III.C; III.D; III.E; and III.F; V; VI.A; and VI.B, on the condition that if the operations of any of PacifiCorp's out-of-state affiliates, or any other circumstances change from the information provided by PacifiCorp in this application, PacifiCorp shall file a Petition for Modification of this decision justifying why the exemption we grant today should be continued under the new set of circumstances. PacifiCorp shall not permit any new California affiliate or any out-of-state affiliate to conduct business in California unless PacifiCorp provides the Commission and each party to Rulemaking (R.) 97-04-011/Investigation (I.) 97-04-012 with notice of the affiliate's intent to conduct business in California and an Advice Letter or update to PacifiCorp's compliance plan demonstrating how PacifiCorp will implement the Rules with respect to that affiliate.

2. PacifiCorp is granted an exemption from Rule IV.C of the Affiliate Transaction Rules until the Commission issues a decision in Application

A.99-03-071 ALJ/JJJ/mrj*

(A.) 99-08-036. If the Commission denies PacifiCorp's requested relief in A.99-08-036, PacifiCorp shall file, or amend its advice letter, to comply with Rule IV.C. If the Commission grants A.99-08-036, PacifiCorp's compliance with Rule IV.C should be moot. While A.99-08-036 is pending, PacifiCorp may refer any party inquiring about California service providers to the Commission's web site, or to other generally available listings of service providers (e.g. the Yellow Pages).

3. A copy of the draft and final decision in this matter should be served on the service list of the Affiliate Transaction proceeding, R.97-04-011/I.97-04-012, as well as on the service list of this proceeding.

4. This proceeding is closed.

This order is effective today.

Dated October 21, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners