

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

ALLIANCE OF WESTERN ENERGY
CONSUMERS,

For an Order Approving Deferred
Accounting Treatment for Increased Fly
Ash Revenues

DOCKET UE-210852

COMMISSION STAFF'S RESPONSE
TO AWEC'S PETITION FOR A
DEFERRAL

I. INTRODUCTION

1 The Alliance of Western Energy Consumers (AWEC) petitioned the Commission for an order requiring PacifiCorp to defer the Washington-allocated share of increased revenues produced by a new contract for the sale of fly ash from its Jim Bridger coal plant. AWEC's request involves, under the facts present here, extraordinary circumstances and material amounts of money. Accordingly, the Commission should grant AWEC's petition and order PacifiCorp to defer the costs at issue for later ratemaking treatment.

II. RELIEF REQUESTED

2 Commission staff (Staff) respectfully requests that the Commission grant AWEC's petition and order PacifiCorp to defer the revenues resulting from the new contract governing the sale of fly ash produced at the Jim Bridger Power Station.

III. BACKGROUND

3 In December 2019, PacifiCorp filed with the Commission revisions to its then-effective tariff, WN-75, triggering a general rate case (GRC).¹ In December 2020, the Commission approved a settlement to resolve the issues raised in that GRC.² That settlement

¹ *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Dockets UE-191024, UE-190750, UE-190929, UE-190981 & UE-180778, Order 09/07/12, 6 ¶ 7 (Dec. 14, 2020) (*Order 09*).

² *See generally Order 09*.

authorized a rate plan beginning on January 1, 2021, and ending on December 31, 2023.³ PacifiCorp cannot file to a GRC involving rates that become effective before January 1, 2024.⁴

4 While forbidding PacifiCorp to make GRC filings, the settlement authorized or required it to make various limited rate filings. One of these was a power cost only rate case (PCORC), and the settlement approved by the Commission required PacifiCorp to file one by June 1, 2021.⁵ The parties intended that filing to “update the [Net Power Cost (NPC)] baseline . . . using a calendar year 2022 forecast based on a nodal pricing dispatch and reflecting the changes to day-ahead scheduling that PacifiCorp [was] implementing.”⁶ The Commission recognized that “[t]he 2021 PCORC w[ould] affect customer rates only by the update to the NPC baseline, which could raise or lower rates compared to those authorized” by the order approving the settlement.⁷

5 PacifiCorp timely made the PCORC filing required by the GRC settlement, and the Commission duly docketed the matter in UE-210402. Most of the parties agreed to settle the issues raised in the docket; AWEC, however, opposed that settlement.⁸

6 In testimony presenting its grounds for opposing the settlement, AWEC noted that PacifiCorp had entered into a new contract for the sale of fly ash from the Jim Bridger Generating Station.⁹ PacifiCorp entered into that contract in October 2020,¹⁰ roughly four or five months after the parties notified the Commission that they had reached a settlement

³ *Order 09* at 18-19 ¶ 48.

⁴ *Order 09* at 18-19 ¶ 48.

⁵ *Order 09* at 25 ¶ 64.

⁶ *Order 09* at 25 ¶ 64.

⁷ *Order 09* at 25 ¶ 64.

⁸ *Wash. Utils. & Transp. Comm’n v. PacifiCorp*, Docket UE-210402, Mullins, Exh. BGM-1T, at 2:1-3 (Nov. 22, 2021) (“Mullins Testimony”). Public Counsel neither supported nor opposed the settlement.

⁹ Mullins Testimony at 24:3-4.

¹⁰ Mullins Testimony at 24:3-4.

resolving PacifiCorp’s 2019 GRC filing.¹¹ AWEC contended that the Commission should incorporate the Washington-allocated share of the revenues from the new fly ash contract “into base rates” through the PCORC.¹²

7 AWEC also filed the instant petition seeking an order requiring PacifiCorp “to defer from the date of [AWEC’s] petition the revenue generated by the Company’s increased Jim Bridger fly ash sales.”¹³

IV. ISSUES PRESENTED

8 Do extraordinary circumstances involving material dollar amounts warrant ordering PacifiCorp to defer the Washington-allocated share of revenues realized from PacifiCorp’s new contract for the sale of fly ash from Jim Bridger?

V. ARGUMENT

9 The Commission should grant AWEC’s petition and require PacifiCorp to defer the revenues from the new Jim Bridger fly ash contract for consideration in a future rate filing. The circumstances surrounding the negotiation of the new contract are extraordinary, and the amount of revenue at issue is material.

¹¹ *Wash. Utils. & Transp. Comm’n v. PacifiCorp*, Dockets UE-191024, UE-190750, UE-190929, UE-190981 & UE-180778, Letter regarding Settlement from Jennifer Cameron-Rulkowski to Administrative Law Judge Andrew O’Connell, at 1 (May 29, 2020). The parties later filed a settlement to resolve the depreciation case consolidated with the GRC and then, roughly contemporaneously with the signing of the fly ash contract, petitioned to reopen the settlement to modify it to ensure that ratepayers received the benefits the initial settlement was to have provided them. None of those filings addressed the fly ash contract. *See generally Wash. Utils. & Transp. Comm’n v. PacifiCorp*, Dockets UE-191024, UE-190750, UE-190929, UE-190981 & UE-180778, Petition for Rehearing & Motion to Amend Settlement Stipulation (Oct. 28, 2020).

¹² Mullins Testimony at 24:12-15.

¹³ *In re Petition of AWEC*, Docket UE-210852, Petition for Accounting Order of the Alliance of Western Energy Consumers, 1 ¶ 1 (Nov. 8, 2021) (AWEC’s Petition).

A. Applicable Legal Standards

10 A party seeking a deferral must generally show that extraordinary circumstances¹⁴
involving material costs or revenues¹⁵ justify recording the costs or revenues for ratemaking
treatment in a period other than the one in which the utility incurred the costs or received the
revenues.

**B. The Circumstances Surrounding The Renewal Of The Fly Ash Contract Are
Extraordinary, And The Contract Involves Material Dollar Amounts**

11 The Commission should grant AWEC’s petition because (1) extraordinary
circumstances surround the negotiation of the new fly ash contract, and (2) the contract
involves material dollar amounts.

12 Turning first to the extraordinary circumstances prong, three interrelated
considerations indicate that, under these specific facts, such circumstances exist.

13 The first involves the timing, specifically the time at which PacifiCorp signed the
new fly-ash contract. It did so roughly four or five months after the parties agreed to a
settlement to resolve its GRC filing, and more than a month before the Commission entered
the order approving the settlement. While nothing indicates PacifiCorp acted in bad faith,¹⁶

¹⁴ *E.g.*, *Wash. Utils. & Transp. Comm’n v. Pac. Power & Light Co.*, Dockets UE-140762 & UE-140617 & UE-131384 & UE-140094, Order 08, 114, ¶ 273 (Mar. 25, 2015) (“The costs are in no sense ‘extraordinary,’ a criterion that should apply to a cost deferral accounting mechanism at the time requested and at the time any recovery is sought.”); *id.* at 110, ¶ 263 (“The replacement power costs in question do not qualify as extraordinary costs such as might arguably be candidates for deferral accounting.”); *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pac. Power & Light Co.*, Dockets UE-050684 & UE-050412, Order 04/Order 03, 11-12, ¶¶ 305-06 (Apr. 17, 2006); *In re Petition of Puget Sound Energy*, Docket UE-011600, Order Granting Accounting Petition, 2, ¶ 6 (Dec. 28, 2001).

¹⁵ *Wash. Utils. & Transp. Comm’n v. Nw. Nat. Gas Co.*, Dockets UG-080519 & UG-080530, Order 01, 3, ¶ 7 (May 02, 2008) (“In prior decisions concerning accounting petitions, the Commission has determined that deferred amounts must be of a magnitude such that recording the costs under the Federal Energy Regulatory Commission’s uniform system of accounts has a material impact on company earnings.”).

¹⁶ And Staff wishes to be explicit: it is not accusing PacifiCorp of acting in bad faith.

there is an information asymmetry at work: PacifiCorp was aware of the negotiation of the new contract, but did nothing to flag the issue for treatment as a pro forma adjustment.

14 The second also involves timing, specifically the timing of future PacifiCorp rate filings. The settlement resolving PacifiCorp’s 2019 GRC filing put PacifiCorp on a three-year rate plan, and it therefore cannot not file a GRC to authorize rates effective before January 1, 2024. Because state law mandates the elimination of coal-fired resources from utility portfolios by December 31, 2025,¹⁷ there is little to no chance that the failure to properly account for the fly ash revenues in the 2019 GRC will correct itself or even out over the relevant time horizon.

15 Third, PacifiCorp has a Power Cost Adjustment Mechanism (PCAM) that reduces the company’s exposure to “significant” variability in power costs between GRC filings.¹⁸ That mechanism updates PacifiCorp’s rates for most, if not all, of the costs associated with the production of fly ash at Jim Bridger, which are the costs of producing electricity there.¹⁹ But the mechanism does not update PacifiCorp’s rates for increased revenues from contracts for the sale of fly ash because those sales are tracked in accounts not used in the PCAM.²⁰

16 Altogether, PacifiCorp signed the new fly ash contract after the parties negotiated the 2019 GRC settlement, but before the Commission approved it. That settlement authorized a rate plan that prevented Pacificorp from filing a GRC with rates effective before 2024. The three years during which the rate plan largely freezes Pacificorp’s rates include three of the five years during which PacifiCorp can include the costs incurred and revenues generated by

¹⁷ RCW 19.405.030(1)(a).

¹⁸ *Wash. Utils. & Transp. Comm’n v. PacifiCorp*, Docket UE-061546, Order 08, ¶ 59 (June 21, 2007).

¹⁹ See Mullins Testimony at 23:13-17 (fly ash is a byproduct of the production of electrical energy at coal plants).

²⁰ Decl. of David Gomez at 1 ¶ 4.

the production of electricity at Jim Bridger in its revenue requirement. And PacifiCorp's PCAM will allow it to update its rates for many of the costs associated with the production of the fly ash, but not the revenues generated by the sale of that fly ash. Staff believes those considerations amount to extraordinary circumstances warranting deferral of the fly ash revenues for later ratemaking treatment.

17 Turning next to the materiality prong, the revenues at issue are material. As AWEC has detailed, "PacifiCorp assumed fly ash revenues from the Jim Bridger power plant of \$2,324,917 total-Company, or \$501,652 Washington-allocated."²¹ It now "expect[s] increased fly ash revenues from Jim Bridger of \$13,895,142 on a total-Company basis, or \$2,998,182 on a Washington-allocated basis."²² The difference is significant, both in terms of the absolute dollar amount of the increase in expected revenues²³ and the percentage increase in the expected revenues;²⁴ it is also significant when compared to the Net Power Cost baseline calculated by Pacificorp in its initial PCORC filing.²⁵

C. The Commission Should Reject PacifiCorp's Arguments In Opposition To A Deferral

18 PacifiCorp raises two arguments in requesting that the Commission deny AWEC's petition: (1) that AWEC is "not appropriately matching costs and benefits,"²⁶ and (2) that "[d]eferrals should be reserved for new or unusual circumstances."²⁷

19 As regards the first argument, Staff is entirely sympathetic to it, but concludes that PacifiCorp raises it at the wrong time. The Commission considers the matching of costs and

²¹ Mullins Testimony at 23:20-21 (footnote omitted).

²² Mullins Testimony at 24:7-9 (footnotes omitted).

²³ AWEC's Petition at 3 ¶ 5.

²⁴ AWEC's Petition at 3 ¶ 5.

²⁵ Decl. of David Gomez at 1 ¶ 5.

²⁶ AWEC's Petition at 3 ¶ 5.

²⁷ AWEC's Petition at 3 ¶ 7.

benefits of prime ratemaking importance to ensure that utilities charge fair, just, reasonable, and sufficient rates.²⁸ But an accounting order is not a ratemaking order, and the Commission will only consider including the deferred amounts into PacifiCorp's revenue requirement in a later GRC, when all of PacifiCorp's costs and revenues will be before it.²⁹ At that time PacifiCorp should make its claim about matching costs and benefits. While Staff takes no position here on the inclusion of any deferred amounts in rates, it notes that PacifiCorp's rates already include some fly ash revenues,³⁰ which the Commission would surely need to account for if ultimately authorizing rate recovery for the deferred amounts.

20 As regards the second argument, Staff agrees wholeheartedly with PacifiCorp that the Commission should restrict the use of deferrals to extraordinary circumstances.³¹ But, as described above, Staff believes that the facts here indicate that extraordinary circumstances surround PacifiCorp's signing of the new contract for the sale of fly ash produced at Jim Bridger.

VI. CONCLUSION

21 The Commission should grant AWEC's petition and require PacifiCorp to defer the revenues from the sale of fly ash produced at the Jim Bridger Power Station for consideration in a later GRC.

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²⁸ *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-160228 & UG-160229, Order 06, 47-48 ¶¶ 79-81 (Dec. 15, 2016).

²⁹ *See in re Application of Avista*, Dockets UE-991255 & UE-991262, 2d Suppl. Order, 35 ¶ 105 (Mar. 6, 2000).

³⁰ AWEC's Petition at 2 n.2.

³¹ *In re Application of Mo. Public Serv.*, Case No. E0-91-358, 1991 Mo. PSC Lexis 56, at * (Dec. 20, 1991) (“[t]he deferral of costs from one period to another period for the development of a revenue requirement violates the traditional method of setting rates. . . . Deferral of costs from one period to a subsequent rate case . . . should only be allowed on a limited basis.”).

DATED this 10th day of December 2021.

Respectfully submitted,

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