

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of)	
)	Docket UE-210829
PACIFICORP, d/b/a)	
PACIFIC POWER & LIGHT COMPANY'S)	ALLIANCE OF WESTERN ENERGY
)	CONSUMERS' RESPONSE IN
Clean Energy Implementation Plan)	OPPOSITION TO STAFF'S MOTION
)	TO CONSOLIDATE
)	
)	
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WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	Docket UE-220376
)	
Complaint,)	ALLIANCE OF WESTERN ENERGY
v.)	CONSUMERS' RESPONSE IN
)	OPPOSITION TO STAFF'S MOTION
)	TO CONSOLIDATE
PACIFICORP, d/b/a)	
PACIFIC POWER & LIGHT COMPANY)	
)	
Respondent.)	

I. INTRODUCTION

1 Pursuant to the Administrative Law Judge's August 1, 2022 Notice of Opportunity to Respond, the Alliance of Western Energy Consumers ("AWEC") hereby submits this Response in Opposition to the Washington Utilities and Transportation Commission ("Commission") Staff's Motion to Consolidate PacifiCorp d/b/a Pacific Power & Light Company's ("PacifiCorp" or "Company") 2021 Clean Energy Implementation Plan, Docket UE-210829 ("CEIP"), with the formal complaint for penalties issued in Docket UE-220376 ("Complaint Docket") ("Motion"). As explained in detail below, AWEC opposes Staff's Motion because the principles of law contained in Dockets UE-220376 and UE-210829 are sufficiently

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dissimilar such that consolidation of the two dockets does not serve judicial economy or administrative efficiency. Rather than consolidate, the Commission should address the Complaint proceeding prior to consideration of PacifiCorp’s CEIP.

II. STANDARD OF REVIEW

2 In accordance with WAC § 480-07-320, the Commission, “in its discretion, may consolidate two or more proceedings in which the facts or principles of law are related.” The Commission also considers whether consolidation serves judicial economy and administrative efficiency, and whether consolidation would unduly delay the resolution of one or more of the proceedings.¹

III. ARGUMENT

3 As other parties have argued in this case, the facts in Dockets UE-220376 and UE-210829 are sufficiently related—a conclusion with which AWEC agrees; however, consolidation would not serve judicial economy or administrative efficiency, nor would it avoid delay in determining whether PacifiCorp’s CEIP should be approved, rejected, or approved with conditions. Additionally, there are principles of law that are dissimilar such that consolidation of the two dockets is not warranted. As such, the Commission should deny Staff’s Motion to Consolidate and adjudicate the Complaint proceeding so that its results can inform PacifiCorp’s CEIP.

¹ Staff’s Motion to Consolidate at ¶ 6, citing to *In re Determining the Proper Classification of Lowper, Inc. d/b/a Lowper Corp., a/k/a Lowper Water Co. & Iliad, Inc. d/b/a Lowper Water Sys.*, Dockets UW-091006 & UW-110213 (Consolidated), Order 02/Order 01, at 2, ¶ 5 (Mar. 24, 2011) and *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-111048 & UG-111049 (Consolidated) & UG-110723, Order 04, at 4, ¶ 8 (Sept. 7, 2011).

a. Consolidation of Dockets UE-220376 and UE-210829 does not further judicial economy or administrative efficiency.

4 Judicial economy and administrative efficiency do not favor consolidation of Staff's Complaint proceeding and PacifiCorp's CEIP proceeding. Consolidation does not circumvent or otherwise mitigate the reality that the Complaint must be addressed before the CEIP can be resolved. Even if consolidated, it is likely that the two dockets would nevertheless require complicated and staggered or consecutive schedules, thus foreclosing judicial economy and administrative efficiency that would normally be achieved through consolidation. Additionally, consolidation could lead to undue delay in resolving the Complaint, as well as a protracted process and thus delay in the outcome of the CEIP.

5 As Staff concedes in its Motion, if the Commission grants its second request for relief, that would "directly impact the CEIP Docket,"² rendering a determination on the CEIP docket impossible while the Complaint is pending.³ Staff also states that "the determination called for in the complaint is a necessary subset of the overall approval question posed in the CEIP docket."⁴ Because the outcome of the CEIP depends on the outcome of the Complaint, staggered or concurrent schedules that resolve the Complaint first would be required. As such, Staff has not articulated any actual administrative or judicial benefit to consolidation.

6 Moreover, the mere existence of an overlap in facts and principles of law (to the extent they exist) does not favor consolidation in the name of judicial economy and administrative efficiency in this case. Staff argues that "the issues raised in the complaint would still need to be addressed within the CEIP Docket, which would unnecessarily duplicate the

² Staff's Motion to Consolidate at ¶ 9.

³ *Id.*

⁴ *Id.* at ¶ 8.

efforts of the parties and the Commission,”⁵ thereby creating inefficiencies. AWEC does not necessarily disagree that there is likely some limited level of duplication; however, Staff fails to recognize that it is unavoidable given the procedural realities above.

7 Consolidation may also unduly delay the resolution of both the Complaint and the CEIP in two ways: first, it would preclude what could otherwise be efficient resolution of the Complaint proceeding; and second, it could lead to a more protracted CEIP proceeding than if the CEIP remained subject to resolution at an open meeting. Regarding the former, it appears possible that the Complaint docket may be expeditiously resolved. Staff argues that PacifiCorp “violated Order 01 of Docket UE-210829 by filing the Final CEIP with a CEIP preferred portfolio that did not incorporate the SCGHGs as explicitly ordered in paragraphs 11 and 18 of the order.”⁶ But as Staff concedes in its Sur-Response to PacifiCorp’s Motion to Dismiss, PacifiCorp did model the SCGHG “in the context of its energy efficiency portfolio.”⁷ AWEC makes no recommendation or determination about whether there may be a misunderstanding between Staff and PacifiCorp in terms of what was modeled in the IRP, regardless of the characterization of modeling used as part of the CEIP, but simply notes that to the extent PacifiCorp can point to appropriate modeling in its IRP, the Complaint could be easily and expeditiously resolved and the CEIP could continue unencumbered.

8 Regarding impacts to the CEIP, consolidation would require that PacifiCorp’s CEIP become a contested proceeding, which it is not currently. No party, including AWEC, has advocated for adjudication for PacifiCorp’s CEIP at this early stage of review and it may

⁵ *Id.* at ¶ 9.

⁶ Docket UE-220376, Complaint and Notice of Prehearing Conference at ¶ 21 (June 6, 2022).

⁷ Docket UE-220376, Staff’s Surreponse to PacifiCorp’s Motions to Dismiss and Stay Penalties at ¶ 15 (July 26, 2022).

ultimately be unnecessary. Avista’s CEIP was able to be resolved without adjudication,⁸ which is generally understood to be a less resource-intensive process for all parties. Regardless of whether the Complaint is granted or not, its resolution prior to the CEIP review process preserves the possibility for an uncontested CEIP and fewer resources required by all parties.

9 Finally, it is possible that not all parties want to participate in both proceedings. As such, consolidation for a party that was interested only in the CEIP and not the Complaint would require more resources than if the Complaint were resolved before the CEIP, and as such is not administratively efficient for all parties. Rather than consolidate the two proceedings, the Commission should first dispel with the Complaint docket and then establish the procedural schedule for the CEIP docket, thus allowing parties to determine their level of engagement in each process separately.

b. Differing burdens of proof render these proceedings sufficiently dissimilar such that consolidation is not warranted.

10 Staff argues that the principles of law in both the Complaint proceeding and the CEIP proceeding are “highly correlated,”⁹ thus favoring consolidation. Correlation is not sufficient to warrant consolidation in this case. As noted by PacifiCorp in its response to Staff’s Motion to Consolidate, there are different burdens of proof and persuasion for each proceeding. AWEC will not repeat those arguments in full here, but notes that as the utility and applicant, PacifiCorp likely has the burden of proof in the CEIP Docket.¹⁰ In the Complaint Docket, Staff, as the petitioner, holds the burden of proof. The Commission has stated that it is “the rule of law

⁸ Docket UE-210628, Order 01 Approving Clean Energy Implementation Plan Subject to Conditions (Jun. 23, 2022).

⁹ Staff’s Motion to Consolidate at ¶ 8.

¹⁰ As explained by PacifiCorp, “[w]hile the Commission has not had the opportunity to opine on which party retains the burden of proof in a CEIP proceeding, the Commission has consistently concluded that the moving party retains the burdens of proof and persuasion—especially for complaint proceedings.” PacifiCorp Response to Staff’ Motion to Consolidate at ¶ 4.

that the proponent of change bear the burden of persuasion.”¹¹ As PacifiCorp argues, the burdens of proof and persuasion must remain clear – “...Staff retains its burden of proof regarding issues raised in the Complaint Docket,”¹² and equally important, PacifiCorp retains the burden of proof that its CEIP meets applicable legal requirements, including that it appropriately reflects the social cost of greenhouse gases. The different burdens of proof and persuasion constitute a sufficiently dissimilar principle of law in this proceeding, disfavoring consolidation. Furthermore, WAC 480-07-470(5) specifies that the party having the burden of proof ordinarily presents its evidence first in a hearing. With overlapping facts and issues, but different burdens of proof, it is difficult to understand how these requirements could be accomplished logistically.

IV. CONCLUSION

11 The difference in the burdens of proof and persuasion in Dockets UE-220376 and UE-210806 are sufficiently dissimilar such that consolidation of the two dockets is not warranted. Further, as discussed above, neither judicial economy nor administrative efficiency is served through consolidation. Therefore, AWEC opposes Staff’s Motion to Consolidate.

Dated this 10th day of August, 2022

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

¹¹ Docket UT- 050606, Order No. 09, at 6:21 (Nov. 29, 2006) *citing* [Wilder v. Nolte, 195 Wash. 1, 14, 79 P.2d 682 \(1938\)](#) (“[H]e who affirms always has the burden”); [State v. Anderson, 72 Wn. App. 253, 260, 863 P.2d 1370 \(1993\)](#) (“[A] claimant generally has the burden of proving the facts necessary to sustain his or her claim”). *See also*, 29 Am Jur 2d § 158: Courts often remark that the burdens of production and persuasion on an issue rest with the party that pleads the affirmative on the issue... It is often said that the burdens of production and persuasion lie upon the party who, absent meeting his burden, is not entitled to relief, or upon the party that would be unsuccessful if no evidence were introduced on either side. Similarly, courts often observe that the burdens of production and persuasion generally fall upon the party seeking a change in the status quo... (citations omitted).

¹² PacifiCorp Response to Staff Motion to Consolidate at ¶ 1.

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