

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

THE WALLA WALLA COUNTRY CLUB,)	DOCKET UE-143932
)	
)	
Complainant,)	THE WALLA WALLA COUNTRY
)	CLUB'S MOTION TO REJECT
v.)	PETITION; ALTERNATIVE MOTION
)	TO EXTEND FILING DATE FOR
PACIFICORP D/B/A PACIFIC POWER & LIGHT COMPANY,)	ANSWER
)	
Respondent.)	(Expedited Consideration Requested)

I. MOTION TO REJECT

1 Pursuant to WAC § 480-07-375,^{1/} the Walla Walla Country Club (“WWCC” or the “Club”) hereby moves the Washington Utilities and Transportation Commission (“WUTC” or the “Commission”) to reject the Petition for Administrative Review of the Initial Order (“Petition”) of Pacific Power & Light Company (“Pacific Power” or the “Company”). The Petition: 1) was filed late according to Commission rules and instructions issued by the WUTC in this proceeding; and 2) does not meet the contents requirements for a petition for administrative review. Rejection of the Petition would be appropriate because, in refusing to consider an infirm filing, the Commission has explained: “the Commission’s procedural rules are not mere technicalities. Those who elect to practice before the Commission are expected to be familiar with and adhere to its procedural rules.”^{2/}

^{1/} “The Commission’s procedural rules allow for motions practice and do not limit it to specifically identified forms of motion.” WUTC v. PacifiCorp, Docket UE-130043, Order 04 at ¶ 9 (July 29, 2013).
^{2/} City of Kennewick v. Port of Benton et al., Docket TR-130499, Order 03 at ¶ 7, n.1 (May 29, 2014).

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Order 03 in this proceeding provides notice to the parties that a Petition for Administrative Review must be filed within twenty (20) days of initial order entry.^{3/} Since the initial order was filed on January 15, 2016, the deadline for any petition for administrative review was February 4, 2016. In adjudicative proceedings, however, Commission rules state: “Electronic submissions must be *completed* by 3:00 p.m. on the date established for filing.”^{4/} Under WUTC rules, the filing of a “pleading ... with the commission in an adjudicative proceeding is not complete *unless* service has been made upon all parties.”^{5/} Given that the Club was not served with the Petition until 4:04 p.m., on February 4, 2016,^{6/} the Petition was not timely filed and may be rejected by the Commission.

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WUTC rules also require that, when filing a petition for administrative review, a “petitioner must separately state and number every contention.”^{7/} Pacific Power simply elected not to follow this requirement in the Petition. Rather, the Petition contains a “Points and Authorities” section which does not align with a set of bullet-pointed issues in the “Introduction” section. This is no minor technical issue; rather, the Company has improperly and significantly added to the Club’s burden in attempting to answer the Petition. That is, the Club must now attempt to parse through and make organizational sense of a sprawling “Points and Authorities” section to specifically address the issues stated in the “Introduction.” Whether the result of an intentional tactic or careless mistake, the Company has failed to adhere to the Commission’s procedural rules and materially prejudiced the Club in the process.

^{3/} Order 03 at 9 (Jan. 15, 2016).

^{4/} WAC § 480-07-145(6)(a)(i) (emphasis added). Indeed, Order 01 cites to rule section -145(6) in directing parties as to the electronic submission of documents in this proceeding. Order 01 at ¶ 15 (Jan. 21, 2015).

^{5/} WAC § 480-07-145(5) (emphasis added). “Pleadings” include petitions according to WAC § 480-07-370(1). All parties in this proceeding have consented to service electronically. Order 01 at ¶ 5.

^{6/} See Attachment A to this motion.

^{7/} WAC § 480-07-825(3).

II. ALTERNATIVE MOTION TO EXTEND FILING DATE FOR CLUB'S ANSWER

4 Alternatively, acknowledging that the WUTC may find good cause not to reject the Company's late and improperly filed Petition, WWCC moves the Commission to similarly find good cause to extend the filing date for the Club's Answer to the Company's Petition for Administrative Review ("Answer"), pursuant to WAC § 480-07-375.^{8/} Specifically, WWCC alternatively moves that the Commission allow the Club 30 days to file an Answer—i.e., establishing March 7, 2016, as the due date for the Answer.

5 Presently, the Answer is due for filing on February 16, 2016. If the Commission finds that good cause exists to accept the Company's Petition, despite the completion of that filing after the 3:00 p.m. deadline on February 4, 2016, Pacific Power will have been effectively granted an extra day to file the Petition. Accordingly, it would be fair and equitable for the Commission to at least grant the Club an extra day to file the Answer. Further, if the Commission elects not to reject the Petition outright, good cause exists for an additional extension, since the Company has failed to properly state and number every contention in the Petition. Additional business days, to allow WWCC time to "connect the dots" between the Company's disjointed "Introduction" and "Points and Authorities" sections, seems appropriate to mitigate due process concerns.

6 Most importantly, however, the Company filed a 29-page Petition—which in considerable part is devoted to untimely taking/condemnation arguments that received little or no

^{8/} To conserve resources and the Commission's time in reviewing this alternative motion, WWCC refers the Commission to arguments and rationale previously articulated in the initial motion, where appropriate.

treatment during the briefing stage.^{9/} The claim is that the WUTC has engaged in a regulatory taking. Condemnation implicates core Constitutional principles (due process and property rights), and will require additional research into this new claim of eminent domain. Not only is there an extensive body of law discussing the elements and measure of damages for such a claim, but research should include whether the Commission has jurisdiction to consider and decide Constitutional questions.

7 Pacific Power's condemnation argument does not appear to be the proper subject of an administrative review. If Pacific Power wants to pursue these condemnation arguments, the proper procedure would seem to be a course allowing these administrative proceedings to work themselves to conclusion and to then initiate an action in Court. WWCC believe such Constitutional questions should be reserved solely for the Courts.

8 Nevertheless, if the Commission would like the Club to address the merits of Pacific Power's condemnation arguments, additional time is requested. The Club believes it cannot properly respond to Pacific Power's brand new arguments within the 10 days provided for by WUTC rules. Accordingly, the Club respectfully asks the Commission to provide 30 days to submit an Answer. The public interest will be served and the Commission benefitted in its considerations by allowing the Club additional time in order to better respond to the significant new shift in Pacific Power's case strategy.

III. REQUEST FOR EXPEDITED CONSIDERATION

9 WWCC respectfully requests expedited consideration of both these motions in light of the short time frame until the Answer may be due. Very recently, one day after receiving

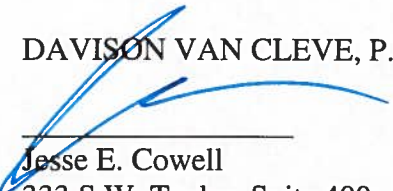
^{9/} The actual text of the Company's two briefs in this proceeding number only 23 pages, combined.

a WUTC Staff motion, the Commission issued a Notice instructing parties to respond within two business days to that Staff motion, in circumstances in which expedited process was not requested and in which no certain time constraints were identified.^{10/} The Club submits that a two business day response opportunity for the Company would be adequate to respond to these motions, were the Commission to similarly issue a prompt Notice.

Dated this 8th day of February, 2016.

Respectfully submitted,

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^{10/} See WUTC v. Avista Corporation, Dockets UE-150204 and UG-150205 (*consolidated*), Notice of Opportunity to Respond to Staff's Motion to Reopen the Record for the limited Purpose of Receiving into Evidence Instruction on Use and Application of Staff's Attrition Model (February 5, 2016).

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