

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant,

v.

PACIFICORP, d/b/a PACIFIC POWER
& LIGHT COMPANY,

Respondent.

DOCKET UE-220376

ORDER 01

GRANTING PETITION TO
INTERVENE; DENYING MOTION;
GRANTING MOTIONS; NOTICE OF
OPPORTUNITY TO FILE REPLY

(Set for July 19, 2022)

- 1 **NATURE OF PROCEEDING.** On June 6, 2022, the Washington Utilities and Transportation Commission (Commission), through its staff (Staff), issued a Complaint and Notice of Prehearing Conference in Docket UE-220376 (Complaint). The Complaint alleged that PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp or Company) violated Commission Order 01 in Docket UE-210829, Revised Code of Washington (RCW) 19.280.030(3)(a)(ii), RCW 19.280.030(3)(a)(iii), Washington Administrative Code (WAC) 480-100-640(7), and WAC 480-100-660(4). The Complaint requested the Commission find PacifiCorp in violation of statute, Commission rule, and Commission order and assess a penalty of \$1,000 per day for each of the five violations alleged.
- 2 **CONFERENCE.** The Commission convened a virtual prehearing conference on June 30, 2022, before Administrative Law Judge Andrew J. O’Connell. Several motions were made and ruled upon during the prehearing conference, which are outlined and memorialized in this Order.
- 3 **APPEARANCES.** Zachary Rogala, Senior Attorney, PacifiCorp, Portland, Oregon, represents PacifiCorp. Nash Callaghan, Assistant Attorney General, Olympia,

Washington, represents Staff.¹ Nina Suetake, Ann Paisner, and Lisa Gafken, Assistant Attorneys General, Seattle, Washington, represent the Public Counsel Unit of the Attorney General's Office (Public Counsel). Sommer J. Moser and Tyler C. Pepple, Davison Van Cleve, P.C., Portland, Oregon, represent the Alliance of Western Energy Consumers (AWEC). Representatives from each Renewable Northwest and The Energy Project made appearances at the conference, explaining that their interest related to Docket UE-210829 and Staff's Motion to Consolidate that Docket with this proceeding.

4 **PETITION TO INTERVENE.** AWEC filed a petition to intervene. No party objected to AWEC's petition. The Commission finds that AWEC has established a substantial interest in this proceeding and that its participation will be in the public interest. Accordingly, the Commission grants AWEC's petition.

5 **MOTION FOR ORAL ARGUMENT ON MOTION TO DISMISS; MOTION FOR OPPORTUNITY TO FILE REPLY.** In response to the Complaint, PacifiCorp filed with the Commission on June 27, 2022, an Answer, a Motion to Stay Penalties and a Motion to Dismiss. In its Motion to Dismiss, PacifiCorp requested that the Commission allow oral arguments on its Motion to Dismiss and also allow it to file a reply to any party's response to its Motion to Dismiss. At the prehearing conference, PacifiCorp repeated its request that the Commission allow oral argument on its Motion to Dismiss and moved that the Commission allow a written reply to any opposing responses. The Commission finds it appropriate to deny PacifiCorp's Motion for Oral Argument and grant its Motion to File a Reply. Considering the novel and complex legal issue presented, the Commission finds it appropriate to afford PacifiCorp an opportunity to file a reply. The Commission also prefers, in this instance, to have all legal arguments made in writing to facilitate review and consideration. Accordingly, the Commission denies PacifiCorp's Motion for Oral Argument and grants its Motion to File a Reply. PacifiCorp must file its reply by July 19, 2022, at 5 p.m.

6 **THE COMMISSION GIVES NOTICE that PacifiCorp must file its reply by July 19, 2022, at 5 p.m.**

7 **MOTION TO CONTINUE DEADLINE FOR RESPONSES.** On June 28, 2022, Staff filed with the Commission its Motion to Consolidate this proceeding with Docket UE-

¹ In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners or presiding officer make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

210829. Also on that date, the Commission issued a Notice of Opportunity to respond to Staff's Motion to Consolidate, along with other responses to PacifiCorp's motions, by July 12, 2022.

8 At the conference, PacifiCorp, either with support or without opposition from the other parties, moved that the deadline for responding to Staff's Motion to Consolidate be continued until a later date. PacifiCorp argued that Staff's Motion to Consolidate would be moot if the Commission decides to grant its Motion to Dismiss. PacifiCorp therefore requested that the Commission set a deadline for responses to Staff's Motion to Consolidate after it has ruled upon its Motion to Dismiss. The Commission grants PacifiCorp's motion and will set a date for responses to Staff's Motion to Consolidate, if necessary, after ruling on PacifiCorp's Motion to Dismiss.

9 **MOTION TO CONTINUE PREHEARING CONFERENCE.** At the conference, Staff moved, with the support of the other parties, to continue the prehearing conference until after the Commission rules on PacifiCorp's Motion to Dismiss and, if necessary, after it rules on Staff's Motion to Consolidate. Staff argued that interested persons in Docket UE-210829 might intervene if the dockets were consolidated.

10 The Commission grants the Motion to Continue the Prehearing Conference. Staff's Motion to Consolidate was filed only two days before the conference. In addition, interested persons in Docket UE-210829 might both be unaware of the prehearing conference in this proceeding, when the Commission typically rules on petitions to intervene, and unaware of the possibility that the Commission has been asked to consolidate the proceedings. This is supported by statements made at the conference by representatives of Renewable Northwest and The Energy Project. Accordingly, the Commission grants the motion and will notice a date for the prehearing conference after it rules on the Motion to Consolidate, if necessary. In addition, the Commission will also issue a notice allowing responses to Staff's Motion to Consolidate from interested persons in Docket UE-210829.

11 Commission procedural rules require the Commission to continue a hearing to a date certain.² The Commission may, however, modify the application of its procedural rules on its own initiative consistent with due process and the public interest.³ Here, under the particular circumstances of this proceeding, it is consistent with due process and the public interest to continue this prehearing conference without a date certain. Neither the date for the Commission's decision on PacifiCorp's Motion to Dismiss nor its decision

² WAC 480-07-385(4).

³ WAC 480-07-110(1).

on Staff's Motion to Consolidate, if necessary, is known. Both motions, however, must be resolved prior to convening a prehearing conference in this matter. At prehearing conferences, the Commission typically, among other things, adopts a procedural schedule and rules on petitions to intervene. To preserve due process for any interested parties in Docket UE-210829 that would seek to intervene in this proceeding only if the two are consolidated, it is necessary to delay this prehearing conference until after the Commission's decisions on PacifiCorp's Motion to Dismiss and Staff's Motion to Consolidate. Accordingly, the Commission determines it is consistent with due process and the public interest to continue the prehearing conference in this matter without a date certain. The Commission will set a date for this prehearing conference when it issues its decision, if necessary, on Staff's Motion to Consolidate.

DATED at Lacey, Washington, and effective July 5, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Andrew J. O'Connell*

ANDREW J. O'CONNELL
Administrative Law Judge