

**BEFORE THE**  
**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of	)	
	)	Docket UE-210852
ALLIANCE OF WESTERN ENERGY CONSUMERS,	)	
	)	ALLIANCE OF WESTERN ENERGY CONSUMERS' MOTION FOR LEAVE TO REPLY TO PACIFICORP'S RESPONSE TO AWEC'S MOTION FOR CLARIFICATION
Petition for Order Approving Deferral of Increased Fly Ash Revenues.	)	
	)	
<hr/>		
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	Docket UE-230172
	)	
Complaint,	)	ALLIANCE OF WESTERN ENERGY CONSUMERS' MOTION FOR LEAVE TO REPLY TO PACIFICORP'S RESPONSE TO AWEC'S MOTION FOR CLARIFICATION
v.	)	
	)	
PACIFICORP, d/b/a PACIFIC POWER & LIGHT COMPANY,	)	
	)	
Respondent.	)	
<hr/>		

**I. INTRODUCTION AND RELIEF REQUESTED**

1 Pursuant to WAC § 480-07-110, the Alliance of Western Energy Consumers (“AWEC”) submits this Motion for Leave to File a Reply to PacifiCorp d/b/a Pacific Power & Light Company’s (“PacifiCorp” or “Company”) Response to AWEC’s Motion for Clarification (“PacifiCorp’s Response”). AWEC’s proposed Reply to PacifiCorp’s Response is included as Attachment 1. Staff supports AWEC’s Motion and Attached Reply.

## II. BACKGROUND

2 On March 27, 2024, AWEC filed its Motion for Clarification of the Commission's Order 08/06 ("Final Order") in the Company's 2023 General Rate Case proceeding. As AWEC noted, and as PacifiCorp agrees, the Commission's Final Order was silent on the process that PacifiCorp should use to remove Jim Bridger Units 3 and 4 and Colstrip Unit 4 from Washington rates in order to meet the Clean Energy Transformation Act's ("CETA") requirement that coal resources be removed from Washington rates prior to January 1, 2026.

3 On April 1, 2024, PacifiCorp filed its Motion for Leave to File a Response to AWEC's Motion for Clarification and proposed response, which requests that the Commission refrain from making a determination on how PacifiCorp should be required to comply with CETA's requirements, based in part on a new legal argument that the Commission could amend PacifiCorp's recently approved two-year Multi-Year Rate Plan ("MYRP") to shorten its term and allow for the Company to file a new MYRP with rates effective January 1, 2026. PacifiCorp's filing raises new issues of fact, law and policy, which are beyond the scope of clarification, have been inappropriately raised for the first time in this case in its Response, are contrary to the Settlement Stipulation in this proceeding to which PacifiCorp is a party, and if adopted, would be to the detriment of customers. Because PacifiCorp has raised these issues of first impression in a permissive response filing to AWEC's Motion for Clarification, AWEC should be granted leave to reply to PacifiCorp's Response.

## III. ARGUMENT

4 WAC § 480-07-835(3) prohibits a party from filing a response to a motion for clarification unless the Commission requests a response, and does not speak to the opportunity for a moving party to respond to a replying party in the event that a reply is permitted. However,

PAGE 2 – MOTION FOR LEAVE TO REPLY

WAC § 480-07-110(1) provides the Commission with authority to “...grant an exemption from, or modify the application of, any of its rules in individual circumstances if the exemption or modification is consistent with the public interest, the purposes underlying regulation, and applicable statutes.” If the Commission grants PacifiCorp’s Motion for Leave to File a Response and allows its Response, given the content of PacifiCorp’s Response, exemption from WAC § 480-07-835(3) to allow AWEC to file a Reply to PacifiCorp’s Response is warranted.

5           First, PacifiCorp’s Response exceeds the scope of clarification permissible in this proceeding. PacifiCorp’s Response offers new facts and legal argument that the Commission could appropriately pursue a third option to later amend the Multi-Year Rate Plan to allow PacifiCorp’s plan to be in effect for less than the approved two-year period.<sup>1</sup> Submitting new facts and legal arguments is both outside of the scope of clarification and outside of the scope of an appropriate response to a motion for clarification.

6           Second, PacifiCorp’s new position that the Commission should not “mandate one specific process for removing costs associated with coal-fired resources from Washington rates”<sup>2</sup> is unsupported by the record. As such, PacifiCorp is advocating for a new position that neither it nor any other party to this proceeding have had the opportunity to evaluate and respond to. As such, AWEC’s Reply is appropriate in this case in order to respond to PacifiCorp’s assertions.

7           Third, PacifiCorp’s recommendation that the Commission “leave open” how PacifiCorp will comply with CETA’s requirement to remove coal costs from net power costs by allowing for the opportunity shorten the Company’s approved two-year MYRP is contrary to the approved Settlement Stipulation in this case to which PacifiCorp is a signatory. Because

---

<sup>1</sup> PacifiCorp’s Response to AWEC’ Motion for Clarification at ¶¶ 10-13.

<sup>2</sup> PacifiCorp’s Response to AWEC’s Motion for Clarification at ¶ 7.

PacifiCorp's position seeks to potentially undermine the value of a settlement to which it agreed, AWEC's Reply is appropriate.

8 Fourth, declining to specify the appropriate compliance path and thereby leaving the decision to PacifiCorp's discretion would be to the detriment of Washington ratepayers. Because these concerns are only implicated by PacifiCorp's new position to leave open CETA compliance, AWEC's Reply is appropriate.

9 Finally, given that AWEC's Reply was filed within three business days of PacifiCorp's Response, allowing AWEC's Reply will not further delay the Commission's review of this matter.

#### IV. CONCLUSION

10 Given the unique circumstances of PacifiCorp's Reply, as set forth above, the Commission should grant AWEC's Motion for Leave to Reply to PacifiCorp's Response and accept AWEC's Reply.

Dated this 4th day of April, 2024

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Sommer J. Moser

Sommer J. Moser

107 SE Washington St., Suite 430

Portland, Oregon 97214

(503) 241-7242 (phone)

(503) 241-8160 (facsimile)

sjm@dvclaw.com

*Attorney for the Alliance of Western Energy Consumers*