

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

I. INTRODUCTION AND RELIEF REQUESTED

1 The Alliance of Western Energy Consumers (“AWEC”) respectfully submits its Reply (“AWEC Reply”) to PacifiCorp d/b/a Pacific Power & Light Company’s (“PacifiCorp” or “Company”) Response to AWEC’s Motion for Clarification (“PacifiCorp’s Response”). On March 27, 2024, AWEC filed its Motion for Clarification (“Motion for Clarification”), which sought to clarify the process by which PacifiCorp would be required to remove coal filed resources from its net power necessary to comply with Washington’s Clean Energy Transformation Act (“CETA”). As noted in AWEC’s Motion for Clarification, the process that

PacifiCorp will be required to use was a litigated issue in this proceeding; however, it is an issue that appears to have been overlooked by the Commission in its Order 08/06 (“Final Order”).

2 On April 1, 2024, PacifiCorp filed its Response, in which for the first time in this proceeding, PacifiCorp advocated that the Commission “leave open” how PacifiCorp will be required to remove coal costs from Washington rates, offering a new legal theory that in addition to the two options on the record in this proceeding – a stand-alone Net Power Cost (“NPC”) Update advocated for by PacifiCorp or a Power Cost Only Rate Case (“PCORC”) advocated for by AWEC and Staff – the Commission could also decide at a later time to “amend the [Multi-Year Rate Plan (“MYRP”)] to allow the Company to remove coal costs from Washington rates through a new MYRP.”¹

3 PacifiCorp’s Response exceeds the scope of clarification permissible in this proceeding and, in practical effect, its new proposal that the Commission leave open how PacifiCorp will comply with CETA requirements is to the detriment of its customers. For these reasons, the Commission should limit its consideration to one of the two positions on the record in this proceeding – a stand-alone NPC update or a PCORC filing. As noted in AWEC’s Motion for Clarification, because PacifiCorp failed to address this issue on the record despite it being raised by other parties,² and because it subsequently indicated that a PCORC may be appropriate, the Commission should clarify that PacifiCorp must remove coal costs from its Washington net power costs via a PCORC in 2025 consistent with AWEC’s and Staff’s recommendations.

AWEC also conferred with Staff, who supports AWEC’s Reply.

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

² See also WAC 480-07-540, which sets forth the burden of proof and persuasion applicable to public service companies.

II. ARGUMENT

A. PacifiCorp's Response exceeds the scope of clarification permissible in this proceeding.

4 As noted above, PacifiCorp has, for the first time in this proceeding, advocated that the method for removing coal from rates should be left to its sole discretion, based in part on a new legal argument that the Commission maintains the authority to amend an approved two-year MYRP to shorten its term, which the Company views as a viable pathway to CETA compliance. However, adding new facts, legal arguments and advocating for an entirely new position on this issue in a permissive response to AWEC's Motion for Clarification goes well beyond the scope of responding to AWEC's motion, and even clarification itself.

5 WAC 480-07-835(1) clearly sets forth the bases for clarification, which include clarifying requirements in the order so that parties can accurately prepare compliance filings and/or "correct patent error[s] *without the need for parties to request reconsideration...*"³ It is axiomatic that the Commission's resolution of issues raised in a motion for clarification cannot rely on evidence beyond the administrative record in the proceeding that supported the Commission's final order.⁴ The Commission did not err in failing to consider this third avenue as a compliance pathway in its Final Order as neither PacifiCorp nor any other party raised it on the record in this proceeding. Further, if the Commission were to agree with PacifiCorp that amending the term of the MYRP is a viable option, which as discussed below it is not, then

³ WAC 480-07-835(1)(b).

⁴ *See e.g.* RCW 34.05.461(3), requiring in relevant part that "[i]nitial and final orders shall include a statement of findings and conclusions, and the reasons and basis therefor, on all the material issues of fact, law, or discretion **presented on the record**, including the remedy or sanction and, if applicable, the action taken on a petition for a stay of effectiveness." (emphasis added); RCW 34.05.461(4), in relevant part, requiring that "[f]indings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding."

AWEC and other parties would likely be forced to request reconsideration of the Commission's clarified order given the prejudicial effect of PacifiCorp raising these arguments for the first time in a permissive reply to AWEC's Motion for Clarification. This undermines the purpose of clarification, which is to avoid such a result. Another purpose for clarification is to elucidate the parties' obligations when it comes to compliance filings. PacifiCorp's proposal to leave CETA compliance open-ended is directly contrary to clarifying requirements in the order so that parties can accurately prepare compliance filings. It would do the exact opposite by leaving compliance to PacifiCorp's discretion to the potential detriment of PacifiCorp's customers.

6 PacifiCorp had ample opportunity to raise these issues during the pendency of this proceeding, but did not. PacifiCorp had the opportunity to attempt to raise these issues directly by filing its own motion for clarification, but it did not. Even if PacifiCorp had made its own filing for clarification, PacifiCorp's additional facts, legal and policy arguments, and newly recommended position would still be outside of the scope of clarification contemplated by WAC 480-07-835(1) and permitted by RCW 34.05.461, which limits final agency orders to material issues of fact, law or discretion presented on the administrative record. As such, the Commission should resolve AWEC's Motion for Clarification based on the administrative record in this case and the appropriate portions of PacifiCorp's Response, which includes an acquiescence that a PCORC would be an appropriate choice for the Commission to order.

7 AWEC notes that if PacifiCorp wants to file a MYRP with a rate-effective date prior to the expiration of the approved MYRP, that is an outcome it can advocate for in a motion to modify the Commission's order in time for the Commission to determine the issue before a PCORC must be filed, which would also allow for the parties to have the appropriate process to brief the legal and policy implications of such an outcome. The current process for clarification –

particularly raised for the first time in a response to another party's motion – is not procedurally proper. Moreover, as discussed more fully in the following section, Commission clarification of the appropriate process is necessary at this juncture.

B. PacifiCorp's proposal to "leave open" the Company's compliance pathway to meet CETA requirements is unsupported by the record, contrary to the approved Settlement Stipulation, and would be to the detriment of its Washington customers.

8 At no point in the administrative record in this proceeding – which would have allowed AWEC and other parties to respond appropriately on the record – did PacifiCorp or any other party advocate for the Commission to "leave open" how the Company would remove coal from Washington rates in order to comply with CETA. As such, the Company's recommendation to do so now is unsupported by the record in this case. In this proceeding, the two proposals before the Commission were a stand-alone NPC update and a PCORC. As set forth in AWEC's Motion for Clarification, PacifiCorp's initial testimony advocated for a stand-alone update, and the Company did not address this issue after that time. However, AWEC's Response Testimony, and Staff's Cross-Answering Testimony, advocated for a PCORC. PacifiCorp had ample ability to respond to the use of a PCORC, but did not – not even to advocate that the Commission leave CETA compliance as an open question for PacifiCorp to unilaterally decide at a later date as it has done for the first time in its Response. Moreover, PacifiCorp's new argument that it may seek to amend the MYRP for a shorter term is directly contradictory to its obligations under the Settlement Stipulation approved by the Commission in this case.⁵ In the Settlement Stipulation, the Settling Parties, including PacifiCorp, agreed to a two-year MYRP pursuant to a settlement

⁵ The Settlement Stipulation was approved subject to conditions, which no party objected to. *See* Order 08/06.
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that is “binding on the parties” and because approved by the Commission, requires all settling parties to “take all actions necessary, as appropriate, to carry out this Stipulation.”⁶

9 Leaving CETA compliance as an open question is also to the detriment of PacifiCorp’s customers given the realities of different types of filings. PacifiCorp offers no explanation as to how and when it will determine what is “the best tool to mitigate rate impacts to Washington customers.”⁷ Filing a PCORC (or a new MYRP filing) requires significantly more lead time than a stand-alone NPC filing. Depending on market dynamics and other factors, it may be financially advantageous for the Company to choose one type of filing over the other in order to maximize shareholder value. Customers do not have access to the same level of information and would likely have no recourse. If PacifiCorp determines that a stand-alone NPC update is the “best tool”, it could make this determination late in 2025 when other options like a PCORC have been effectively time-barred, leaving customers and the Commission with no choice but to accept PacifiCorp’s decision.

C. The Commission should not make a determination about its authority to amend PacifiCorp’s MYRP within the context of clarification of its Final Order.

10 As PacifiCorp acknowledges, RCW 80.28.425(5) provides that “if the Commission approves a MYRP, the electric utility will be bound by the terms of the MYRP for at least the first two rate years of the MYRP.”⁸ Nevertheless, PacifiCorp argues that the Commission retains its authority to amend a MYRP pursuant to its broad authority to amend its prior orders in accordance with RCW 80.04.210.⁹

⁶ Settlement Stipulation at ¶ 35.

⁷ PacifiCorp’s Response at ¶ 9.

⁸ PacifiCorp’s Response at ¶ 11.

⁹ PacifiCorp’s Response at ¶ 12.

11 PacifiCorp raises a legal issue of first impression – whether the Commission has the authority to shorten a two-year MYRP – that is not properly before the Commission at this juncture in the proceeding, in particular as part of a responsive filing that requires the Commission to grant an exemption from its own administrative rules in order to consider it. In addition to the Commission’s legal authority, PacifiCorp’s proposal also implicates significant policy issues, particularly within the context of a rate case settlement. First, given the comprehensive nature of the Multi-Year Rate Plan statute (RCW 80.28.425) and its careful balance of utility interests and customer interests, shortening the minimum time for a MYRP begs the question of whether the statute’s policy objective would still be achieved. And in this case, PacifiCorp settled on a two-year MYRP. As part of that settlement, all parties considered (or should have considered) the benefits and risks to settlement specifically for the agreed-upon term. If a utility is willing to agree to a two-year MYRP, but then seeks to undercut the value of that settlement within two weeks of the Commission issuing an order, it begs the question of whether settlements in MYRPs are valuable.

12 These issues aside, the Commission need not reach a determination on its authority to shorten the term of a two-year MYRP as part of clarification in this proceeding. Even as PacifiCorp concedes, any such action would necessitate a separate filing at a future time. At that point, PacifiCorp, AWEC and any other interested parties could fully brief the Commission on their positions regarding the Commission’s legal authority, even if the Commission were to order PacifiCorp to file a PCORC in order to remove coal from rates in response to AWEC’s currently pending Motion for Clarification.

III. CONCLUSION

13 For the reasons set forth above, the Commission should decline to “leave open” how PacifiCorp will comply with CETA’s requirement to remove coal from Washington rates before January 1, 2026, and make a decision based on the administrative record in this proceeding. As demonstrated by AWEC, PacifiCorp failed to meet its burden of proof in advocating for a stand-alone NPC Update to accomplish this task, and by its own admission is open to the use of a PCORC. As such, ordering PacifiCorp to utilize a PCORC as set forth in AWEC’s and Staff’s testimony is both supported by the record and procedurally appropriate. Any possibility of amending the Company’s MYRP for a shorter term should not be considered by the Commission as part of its decision on AWEC’s Motion for Clarification, but should only be considered, if at all, when PacifiCorp affirmatively requests a modification to its MYRP.

Dated this 4th day of April, 2024.

Respectfully submitted,

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