

Docket UE-220376 - Vol. I

WUTC v. Pacificorp dba Pacific Power & Light Company

June 30, 2022



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND) DOCKET UE-220376
TRANSPORTATION COMMISSION,)
)
Complainant,)
)
vs.)
)
PACIFICORP, d/b/a PACIFIC)
POWER & LIGHT COMPANY,)
)
Respondent.)

VIRTUAL PREHEARING CONFERENCE

VOLUME I

Pages 1-22

ADMINISTRATIVE LAW JUDGE ANDREW J. O'CONNELL

Washington Utilities and Transportation Commission
621 Woodland Square Loop Southeast
Lacey, Washington 98503

(All participants appeared via videoconference.)

DATE TAKEN: JUNE 30, 2022

REPORTED BY: ROSE DETLOFF, RMR, CCR #21036100

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3 ANDREW J. O'CONNELL

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1 LACEY, WASHINGTON; JUNE 30, 2022

2 1:32 p.m.

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4 P R O C E E D I N G S

5

6 JUDGE O'CONNELL: Good afternoon. The time
7 is approximately 1:30 p.m.

8 My name is Andrew O'Connell. I'm an
9 Administrative Law Judge with the Washington Utilities
10 and Transportation Commission, and I will be presiding
11 in this proceeding.

12 We're here today for a prehearing conference in
13 Docket UE-220376, which regards a complaint for
14 penalties filed by Commission Staff against Pacificorp
15 for alleged violations of Washington statute, Commission
16 rules, and a Commission order.

17 Let's move forward with appearances. I notice
18 a lot of new faces, at least to me. So please tell me
19 how you would like me to address you during this
20 conference. For me, you can use he/him pronouns and
21 address me as Judge or Judge O'Connell.

22 Okay. Let's start with Commission Staff.

23 MR. CALLAGHAN: Thank you, Your Honor. Nash
24 Callaghan, Assistant Attorney General, appearing on
25 behalf of Commission Staff. My pronouns are he/him.

1 JUDGE O'CONNELL: Thank you.

2 And for Pacificorp?

3 MR. ROGALA: Thank you, Your Honor. Zack
4 Rogala, pronouns he/him, counsel for Pacificorp.

5 JUDGE O'CONNELL: Thank you.

6 For Public Counsel?

7 MS. PAISNER: Good afternoon. This is Ann
8 Paisner, and I'm here on behalf of Public Counsel, and
9 my pronouns are she/her. Thank you.

10 JUDGE O'CONNELL: Okay. Thank you.

11 And for AWEC?

12 MS. MOSER: Good afternoon. Sommer Moser on
13 behalf of AWEC, and my pronouns are she/her.

14 JUDGE O'CONNELL: Okay. Thank you.

15 I also notice a number of other attorneys that
16 I'm familiar with that have joined us today, and before
17 we came on the record, I asked if there were going to be
18 any other appearances. I'd like to open up now for
19 those attorneys if you would like to at least state that
20 you're here.

21 My understanding is that you have not yet
22 decided to participate in this docket, but if you would
23 like to make an appearance for the record, I'll allow
24 that.

25 MR. FFITCH: Yes. Thank you, Your Honor.

1 Simon ffitch on behalf of The Energy Project. We would
2 like to make an appearance for the record today. We are
3 reserving intervention until there's a decision on the
4 consolidation motion.

5 JUDGE O'CONNELL: Thank you.

6 And for Renewable Northwest?

7 MR. GREENE: Yes. Thank you, Judge
8 O'Connell. This is Max Greene making an appearance for
9 Renewable Northwest.

10 Similar to Mr. ffitch, we do not currently plan
11 to intervene, but we'll make an appearance for purposes
12 of monitoring, and we reserve the right to seek
13 intervention should this docket be consolidated with the
14 main CEIP docket.

15 JUDGE O'CONNELL: Okay. Thank you both.

16 Is there anyone else who is wanting to make an
17 appearance? Okay. Hearing nothing, we'll move along.

18 Before we address petitions to intervene, I'll
19 note for the record that Pacificorp has filed a motion
20 to dismiss Staff's complaint and a motion to stay the
21 accumulation of daily penalties that are sought by
22 Staff.

23 Also, Staff has filed a motion to consolidate
24 this proceeding with Docket UE-210829, which is the
25 docket where the Commission issued the order Staff now

1 alleges has been violated by Pacificorp.

2 I have set a response deadline of July 12th,
3 2022, for these three motions and will therefore not be
4 addressing these motions at this prehearing conference.
5 We will, however, address petitions to intervene, a
6 procedural schedule, and several other procedural
7 issues.

8 In regards to those motions, hearing from a
9 number of interested organizations, I am going to invite
10 and allow those entities that were involved in Docket
11 UE-210289 (sic) to go ahead and file a response in both
12 dockets in response to Staff's motion to consolidate
13 this docket with that one.

14 And, for the record, I'm noting Renewable
15 Northwest and The Energy Project as two organizations
16 that have noted interest.

17 Okay. I'd like to move forward now to the
18 petitions to intervene. Okay. One moment.

19 Mr. Rogala, go ahead.

20 MR. ROGALA: Thank you, Your Honor. I
21 appreciate setting a date certain to respond to the
22 motion to consolidate.

23 Pacificorp doesn't have a position on the
24 motion yet. We see pros and cons both ways. But we'd
25 like to reserve our right to respond to the motion until

1 after Your Honor makes a decision on the dispositive
2 motions. So we're wondering if we can make that request
3 and make a decision on that issue.

4 JUDGE O'CONNELL: Okay. Let me think about
5 that. Mr. Rogala, what's your thinking behind making
6 that request?

7 MR. ROGALA: Yeah. Partly resources.
8 Holiday weekend coming up. And, you know, in the event
9 that the Commission grants Pacificorp's motion to
10 dismiss, there's no docket to consolidate, so we
11 wouldn't need to go through that process.

12 But second, I think there's some good
13 discussions between parties that might avoid the need
14 for us to brief the issue. So it could be the case that
15 we agree to not consolidate or to consolidate and give
16 us more time to allow us to have those discussions.

17 JUDGE O'CONNELL: Okay. I understand your
18 point, and I'm going to consider that. I want to hear
19 from the other parties in a moment about your request.

20 First, I want to go through the petitions to
21 intervene -- the one that I have seen in the docket so
22 far -- and after we've addressed all petitions to
23 intervene, if there are any additional, then I will open
24 up the floor and we can talk about your request.

25 So I've reviewed the petition to intervene

1 filed by the Alliance of Western Energy Consumers,
2 otherwise known as AWEC. I am unaware of any written
3 objections to AWEC's petition.

4 Is there any objection to their intervention?

5 MR. CALLAGHAN: None from Staff, Your Honor.

6 MR. ROGALA: Not from Pacificorp, Your
7 Honor.

8 JUDGE O'CONNELL: Okay. Thank you.

9 MS. PAISNER: No objection from Public
10 Counsel.

11 JUDGE O'CONNELL: Okay. Thank you. So
12 hearing no objection, that petition to intervene will be
13 granted, and I'll memorialize that in the prehearing
14 conference order.

15 Now, to address the question of whether I
16 should extend the deadline for responses to the motion
17 to consolidate, I will make a decision on that and
18 include it in the prehearing conference order that I
19 will issue after this conference.

20 I'd like to turn first to Staff after you've
21 had a couple minutes to think about it, since it is your
22 motion. What is your response to allowing some extra
23 time after a decision on the motion to dismiss and the
24 motion to stay penalties has been made?

25 MR. CALLAGHAN: Staff has no objection to

1 that. We think it makes sense.

2 JUDGE O'CONNELL: Okay. And I want to hear
3 from Public Counsel as well.

4 MS. PAISNER: May I just ask a clarifying
5 question? So I think the request is to extend the
6 deadline for that past the 12th.

7 JUDGE O'CONNELL: So, yeah, I think that's a
8 good question for clarity.

9 My understanding is that Pacificorp's request
10 is that the deadline for responding to that motion to
11 consolidate be set for a date after the Commission will
12 make a decision on its motion to dismiss. And I do
13 intend to issue a decision on the motion to dismiss and
14 the motion to stay penalties at the same time.

15 I would have anticipated -- my plan had been to
16 issue an order resolving all three motions, but if I'm
17 going to consider moving the deadline for the motion to
18 consolidate, then I would at that time plan on only
19 issuing a decision on those two motions.

20 And, Mr. Rogala, correct me if I'm wrong, your
21 request is to wait to have those responses to the motion
22 to consolidate due until after the Commission makes a
23 decision on the other two.

24 MR. ROGALA: Correct, Your Honor.

25 It also strikes me while you're talking -- I

1 think you can rule on all three of them -- motion to
2 consolidate, motion to dismiss, motion to stay
3 penalties -- if the motion to dismiss is granted in full
4 because that kind of renders the case moved, and then
5 the motion to consolidate would just be another
6 outstanding decision that can kind of be a pro forma
7 action.

8 But if you decide to deny Pacificcorp's motion
9 in whole or in part, then we'd like to have the deadline
10 to respond to the motion to consolidate in whole until
11 after that decision. And we're open to whatever you
12 think is reasonable for dates or a timeline for us to
13 respond.

14 JUDGE O'CONNELL: Sure. I appreciate that
15 clarification because that's accurate. If the
16 Commission decides to grant your motion to dismiss, then
17 the question of whether to consolidate would be moot.

18 Ms. Paisner, with that clarity, does Public
19 Counsel have a position?

20 MS. PAISNER: We do not object to the
21 request to toll the deadline beyond the date of any
22 decision on the other motions.

23 JUDGE O'CONNELL: Okay. Ms. Moser for AWEC,
24 do you have any position?

25 MS. MOSER: We would support addressing the

1 motion to consolidate after the motion to dismiss has
2 been resolved.

3 JUDGE O'CONNELL: Okay. I am going to
4 modify the notice in this docket, then. And if there
5 needs to be a decision made on the motion to consolidate
6 in the case that Pacificorp's motion is denied, then the
7 Commission will set a date for responses to the motion
8 to consolidate in such an order. If the Commission
9 decides to grant Pacificorp's motion, then there's not
10 going to be any need for the motion to consolidate.

11 Okay. Is there anyone else -- let me back up a
12 step to petitions to intervene. I'm unaware of any
13 other petitions to intervene other than the Alliance of
14 Western Energy Consumers. And I've been made aware of
15 The Energy Project and Renewable Northwest's interest as
16 it pertains to the other docket.

17 With those exceptions, is there anyone else
18 here at this conference that intends to intervene in
19 Docket UE-220376? Okay. Hearing none, let's proceed.

20 And I do want to note for the record that I
21 understand The Energy Project and Renewable Northwest
22 may decide that they would like to intervene in this
23 docket if it is consolidated.

24 I'm going to include in the prehearing
25 conference order directions on how we are going to

1 proceed in the event that the consolidation is
2 eventually granted, and I will at that point consider
3 additional petitions to intervene.

4 MR. FFITCH: Thank you, Your Honor.

5 MR. GREENE: Thank you, Your Honor.

6 JUDGE O'CONNELL: So I want to move on to
7 the procedural schedule for this docket.

8 Now, I understand that in the case that
9 Pacificorp's motion is granted, there's not going to be
10 a procedural schedule. But we're here today for the
11 purposes of addressing procedural issues in this
12 proceeding, and we are going to act in this conference
13 as if this proceeding is going to continue. And I
14 intend to set a schedule as if this proceeding is going
15 to continue pending the decision on Pacificorp's
16 motions.

17 Have the parties been able to discuss with each
18 other a procedural schedule?

19 MR. CALLAGHAN: So unfortunately, I think
20 we've all been very busy. I did -- I was able to work
21 on the bare bones of a proposal over lunch, but I have
22 not been able to share that with any of the other
23 parties. So I think if we could recess and just discuss
24 amongst ourselves, maybe we could come to an agreement
25 on a proposed procedural schedule.

1 So Staff's proposal -- I was trying to make a
2 schedule that would work regardless of whether or not
3 this was consolidated with the CEIP docket. So this
4 schedule would include a public comment hearing, you
5 know, in the CEIP docket, assuming that it's
6 consolidated. But obviously, if it's not consolidated,
7 it would not need a public comment hearing.

8 JUDGE O'CONNELL: Okay. I understand that
9 adds a little wrinkle.

10 Let me allow the parties to talk amongst
11 yourselves off the record. I will step out of this Zoom
12 conference, and the parties can discuss a proposal for a
13 procedural schedule. If you come to one or if there's a
14 determination that you can't come to an agreement,
15 Mr. Callaghan, please notify me and I will step back in,
16 okay?

17 MR. CALLAGHAN: Yes. Thank you, Your Honor.

18 JUDGE O'CONNELL: With that, I am going to
19 step off. We will be off the record and in recess
20 temporarily. Thank you.

21 (A recess was taken from 1:48 p.m. to
22 2:07 p.m.)

23 JUDGE O'CONNELL: We're back on the record.
24 The time is approximately 2:05 p.m. in the afternoon,
25 and we just got back from a discussion between the

1 parties about the procedural schedule.

2 I will turn it over to you, Mr. Callaghan, to
3 address what the parties' thinking is.

4 MR. CALLAGHAN: Thank you, Your Honor.

5 So as our discussion went forward on a
6 procedural schedule, issues were raised related to -- in
7 the CEIP docket.

8 Given that we have not set an adjudication in
9 that -- we haven't had a prehearing conference or an
10 open meeting in that docket -- that parties who may have
11 wanted to intervene in that docket -- if we decided a
12 procedural schedule today that would be used in the
13 consolidated docket should the motion to consolidate be
14 granted, we're worried that those intervenors wouldn't
15 have had an opportunity to weigh in on the procedural
16 schedule. It would have essentially been decided before
17 they had an opportunity to intervene.

18 Now, Mr. Greene did let us know that he
19 received the notice of this hearing, but still, we had
20 concerns. And given the likely timing of the responses
21 to the motion to consolidate, I don't think there was
22 any concern that continuing the prehearing conference in
23 this case out until we have a ruling on the motion to
24 consolidate would cause any harm. But I'll just speak
25 for Staff on that point.

1 So our proposal is to continue this out until a
2 date after the motion to consolidate is ruled on.

3 JUDGE O'CONNELL: Okay. Thank you,
4 Mr. Callaghan. And is that proposal -- I'm going to
5 call it a motion to continue this prehearing conference.

6 Is that motion supported by all the parties
7 here to grant an intervention or otherwise involved in
8 this case?

9 MR. ROGALA: Yes, Your Honor.

10 JUDGE O'CONNELL: Okay. I heard from
11 Pacificorp that they're in favor.

12 Ms. Moser, go ahead.

13 MS. MOSER: Apologies for interrupting. We
14 are also supporting that motion.

15 JUDGE O'CONNELL: Okay.

16 And Ms. Paisner?

17 MS. PAISNER: Public Counsel supports that
18 motion.

19 JUDGE O'CONNELL: Okay. I see a lot of
20 merit in your motion. I was actually thinking about
21 this while we were away. My thoughts were that the
22 motion to consolidate has not been granted and they
23 haven't been consolidated, and I have been willing to go
24 forward to set a schedule as it pertains to this docket
25 and the complaint.

1 But, Mr. Callaghan, you make a good observation
2 that is backed up by the fact that Renewable Northwest
3 and The Energy Project are in this prehearing conference
4 and have stated that they would be interested in joining
5 if the docket is consolidated.

6 So considering the circumstances surrounding
7 where we are at this point, I'm inclined to grant the
8 parties' motion to continue this conference until after
9 we have a decision on the motion to consolidate, which
10 will be set at some point after the Commission decides
11 the motion to dismiss and the motion to stay penalties.
12 That will also continue our discussion for any other
13 procedural matters that would go forward in this docket.

14 Okay. So having decided that, I'm going to
15 grant that motion.

16 I'd like to hear from the parties about --
17 well, I want to hear from the parties if there's
18 anything else we need to discuss. I am of the mindset
19 that the rest of this discussion in this conference
20 needs to wait.

21 But is there anything else that we need to
22 address today?

23 MR. ROGALA: Your Honor, I have two quick
24 points, if I can have some time. I appreciate it.

25 JUDGE O'CONNELL: Please. Go ahead.

1 MR. ROGALA: So first, more of just a
2 signposting. We would just like to reiterate our
3 request for oral argument on the motion to dismiss. We
4 think that the complaint raises several, I think, clean
5 issues of law, but they are complicated issues. So we'd
6 like the opportunity to provide oral argument. So just
7 reiterating that request that's found on our motion to
8 dismiss.

9 And then we'd also like to request the ability
10 to file a reply to any response brief filed by parties
11 on the motion to dismiss and the motion to stay
12 penalties. I believe under Commission regulations that
13 replies are prohibited unless granted by the presiding
14 officer. So just making that request here.

15 JUDGE O'CONNELL: I find written responses
16 to motions to be much more helpful in clarifying thorny
17 pieces of blah. I am inclined already to grant your
18 request to a reply to whatever responses are filed in
19 opposition to your motion to dismiss.

20 However, at this time, I'm going to deny your
21 request or your motion for oral argument because I think
22 I'm going to get a lot more out of having the arguments
23 in black and white, okay?

24 MR. ROGALA: Thank you, Your Honor.

25 JUDGE O'CONNELL: Okay. Is there anything

1 else we should address today?

2 MR. FFITCH: Your Honor, Simon ffitich for
3 The Energy Project. Just a quick clarification.

4 Earlier in the prehearing conference, you
5 mentioned, I believe, the possibility for The Energy
6 Project and Renewable Northwest to file responses to one
7 or more of the motions. I believe that was your
8 wording. So I wanted to get clarification on that.

9 JUDGE O'CONNELL: Let me clarify. My notes
10 that I have indicate that I ruled that I'm going to
11 allow interested parties in Docket UE-210829 -- I
12 believe that's the correct docket number. I'm seeing
13 some head nodding, so I think I have that right this
14 time.

15 I'm going to allow the interested parties in
16 that docket to file a response to the motion to
17 consolidate.

18 MR. FFITCH: Thank you. All right.

19 JUDGE O'CONNELL: That will not pertain to
20 the motion to dismiss or the motion to stay penalties.

21 MR. FFITCH: All right. Thank you. That's
22 a helpful clarification because we had not intended to
23 respond to the other motions. So thank you for the
24 clarification.

25 JUDGE O'CONNELL: Yes. Okay. I want to

1 summarize the decisions that I've made today.

2 First is to grant the parties' motion to
3 continue this prehearing conference until after the
4 Commission decides on the Staff's motion to consolidate
5 this docket with Docket UE-210829.

6 Next, I am going to modify the notice regarding
7 the motions to dismiss, the motion to stay penalties,
8 and the motion to consolidate to move that response
9 until after the Commission has made a decision on the
10 other two motions.

11 And if that motion to dismiss is not granted,
12 if it's denied, we'll get to everything else at that
13 point. But if that becomes the case, then I will allow
14 interested parties in Docket UE-210829 to also respond
15 to the motion to consolidate.

16 Okay. Are there any questions from the parties
17 about where we stand at this point? I'm seeing head
18 shaking. I'm going to pause a moment.

19 Go ahead.

20 MR. ROGALA: Your Honor, was that all of
21 your rulings, or were we getting to the reply brief,
22 too?

23 JUDGE O'CONNELL: Thank you. As far as the
24 reply brief, I am going to allow Pacificorp to file a
25 reply to any responses that are filed regarding the

1 motion to dismiss and the motion to stay penalties.

2 I'm going to deny Pacificorp's motion to have
3 oral argument primarily because there's already ample
4 opportunity for Pacificorp to address all of the
5 arguments, and I find it much more helpful to have all
6 of the arguments in black and white and be able to go
7 over them and the legal support for them.

8 Okay. Have I missed anything, or is there
9 anything else that we need to discuss today? Okay.

10 Mr. Rogala, is there anything?

11 MR. ROGALA: I was just going to confirm
12 that that covers it from Pacificorp's side. Thank you,
13 Your Honor.

14 JUDGE O'CONNELL: Okay. So hearing nothing,
15 we are going to -- I want to say we're going to be in
16 recess on this prehearing conference until such time as
17 we set a new one, if need be, considering all of the
18 motions that need to be ruled upon.

19 And for at least today, we will be adjourned.
20 Thank you all.

21 (Proceedings adjourned at 2:18 p.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF KING

I, Rose Detloff, a Certified Court Reporter in
and for the State of Washington, do hereby certify that
the foregoing transcript is true and accurate to the
best of my knowledge, skill and ability.


ROSE DETLOFF, CCR, RMR



My commission expires:
DECEMBER 6, 2022