BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, ) DOCKET UE-220376

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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LACEY, WASHINGTON; JUNE 30, 2022
1:32 p.m.
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PROCEEDINGS

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

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

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

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

Okay. Let's start with Commission Staff.

MR. CALLAGHAN: Thank you, Your Honor. Nash Callaghan, Assistant Attorney General, appearing on behalf of Commission Staff. My pronouns are he/him.
JUDGE O'CONNELL: Thank you.

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

JUDGE O'CONNELL: Thank you.

For Public Counsel?

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

JUDGE O'CONNELL: Okay. Thank you.

And for AWECC?

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

JUDGE O'CONNELL: Okay. Thank you.

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

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

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

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

JUDGE O'CONNELL: Thank you.

And for Renewable Northwest?

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

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

JUDGE O'CONNELL: Okay. Thank you both.

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

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

Also, Staff has filed a motion to consolidate this proceeding with Docket UE-210829, which is the docket where the Commission issued the order Staff now alleges has been violated by Pacificorp.

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

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

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

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

Mr. Rogala, go ahead.

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

Pacificorp doesn't have a position on the motion yet. We see pros and cons both ways. But we'd like to reserve our right to respond to the motion until after Your Honor makes a decision on the dispositive motions. So we're wondering if we can make that request and make a decision on that issue.

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

MR. ROGALA: Yeah. Party resources.

Holiday weekend coming up. And, you know, in the event that the Commission grants Pacificorp's motion to dismiss, there's no docket to consolidate, so we wouldn't need to go through that process.

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

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

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

So I've reviewed the petition to intervene...

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

Is there any objection to their intervention?

MR. CALLAGHAN: None from Staff, Your Honor.

MR. ROGALA: Not from Pacificorp, Your Honor.

JUDGE O’CONNELL: Okay. Thank you.

MS. PAISNER: No objection from Public Counsel.

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

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

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

MR. CALLAGHAN: Staff has no objection to that. We think it makes sense.

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

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

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

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

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

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

MR. ROGALA: Correct, Your Honor.

It also strikes me while you’re talking -- I think you can rule on all three of them -- motion to consolidate, motion to dismiss, motion to stay penalties -- if the motion to dismiss is granted in full because that kind of renders the case moved, and then the motion to consolidate would just be another outstanding decision that can kind of be a pro forma action.

But if you decide to deny Pacificorp’s motion in whole or in part, then we’d like to have the deadline to respond to the motion to consolidate in whole until after that decision. And we’re open to whatever you think is reasonable for dates or a timeline for us to respond.

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

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

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

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

MS. MOSER: We would support addressing the motion to consolidate after the motion to dismiss has been resolved.

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

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

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

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

I’m going to include in the prehearing conference order directions on how we are going to
proceed in the event that the consolidation is eventually granted, and I will at that point consider additional petitions to intervene.

MR. FITCH: Thank you, Your Honor.

MR. GREENE: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

JUDGE O'CONNELL: We're back on the record.

The time is approximately 2:05 p.m. in the afternoon, and we just got back from a discussion between the parties about the procedural schedule.

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

MR. CALLAGHAN: Thank you, Your Honor.

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

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

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

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

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

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

MR. ROGALA: Yes, Your Honor.

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

Ms. Moser, go ahead.

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

JUDGE O'CONNELL: Okay.

And Ms. Paisner?

MS. PAISNER: Public Counsel supports that motion.

JUDGE O'CONNELL: Okay. I see a lot of merit in your motion. I was actually thinking about this while we were away. My thoughts were that the motion to consolidated has not been granted and they haven't been consolidated, and I have been willing to go forward to set a schedule as it pertains to this docket and the complaint.
But, Mr. Callaghan, you make a good observation that is backed up by the fact that Renewable Northwest and The Energy Project are in this prehearing conference and have stated that they would be interested in joining if the docket is consolidated.

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

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

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

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

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

JUDGE O'CONNELL: Please. Go ahead.

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

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

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

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

MR. ROGALA: Thank you, Your Honor.

JUDGE O'CONNELL: Okay. Is there anything else we should address today?


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

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

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

MR. FFITCH: Thank you. All right.

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

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

JUDGE O'CONNELL: Yes. Okay. I want to summarize the decisions that I've made today.

First is to grant the parties' motion to continue this prehearing conference until after the Commission decides on the Staff's motion to consolidate this docket with Docket UE-220376.

Next, I am going to modify the notice regarding the motions to dismiss, the motion to stay penalties, and the motion to consolidate to move that response and The Energy Project are in this prehearing conference and have stated that they would be interested in joining.

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

Go ahead.

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

JUDGE O'CONNELL: Thank you. As far as the reply brief, I am going to allow PacifiCorp to file a reply to any responses that are filed regarding the...
motion to dismiss and the motion to stay penalties.

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

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

Mr. Rogala, is there anything?

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

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

And for at least today, we will be adjourned.

Thank you all.

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

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