

WUTC v. PacifiCorp dba Pacific Power & Light Company

Docket No. UE-230877 - Vol. I

February 6, 2024



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	
)	
vs.)	DOCKET UE-230877
)	
PACIFICORP d/b/a PACIFIC POWER &)	
LIGHT COMPANY,)	
)	
Respondent.)	PAGES 1-15
)	

PREHEARING CONFERENCE - VOL. I
BEFORE ADMINISTRATIVE LAW JUDGE JAMES BROWN II
February 6, 2024

Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, Washington 98504

TRANSCRIBED BY: ELIZABETH PATTERSON HARVEY,
FAPR, RPR, WA CCR 2731

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1 February 6, 2024 - 11:00 a.m.

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4 JUDGE BROWN: Now we're on the record. Good
5 afternoon. We're here today for a prehearing conference in
6 Docket UE 230877, which is captioned Washington Utilities
7 and Transportation Commission versus PacifiCorp, d/b/a
8 Pacific Power & Light Company.

9 My name is James E. Brown II. I am an
10 administrative law judge with the commission, and I will be
11 co-presiding in this matter along with the commissioners.

12 And let's start by taking appearances and
13 addressing, if there are any, petitions for intervention.
14 And I don't see any petitioning parties, unless I'm
15 mistaken. I'm sure at some point someone will speak up if I
16 am incorrect. So let's begin with PacifiCorp.

17 ATTORNEY ROGALA: Thank you, your Honor.
18 Zachary Rogala, attorney for PacifiCorp.

19 JUDGE BROWN: Okay. And let's go to staff.

20 ATTORNEY CALLAGHAN: Thank you, your Honor.
21 Nash Callaghan, AAG for commission staff.

22 JUDGE BROWN: Okay. And let's go to public
23 counsel.

24 ATTORNEY O'NEILL: Good morning, your Honor.
25 Tad Robinson O'Neill on behalf of public counsel.

1 JUDGE BROWN: Okay. And are there any attendees
2 that would wish to intervene as a party, potentially?

3 Okay. Hearing none, let's move to a procedural
4 schedule. Have the parties had a chance to confer regarding
5 any potential dates for the procedural schedule at this
6 point?

7 ATTORNEY CALLAGHAN: We have not, your Honor. I
8 was hoping that we could go off the record and briefly
9 discuss it in this hearing.

10 JUDGE BROWN: Okay. All right. Well, we can go
11 off the record, and the parties can at this time discuss a
12 proposed schedule.

13 Is someone on from the commission? Okay. Can I
14 be taken off and then notified when they are back on?

15 ATTORNEY CALLAGHAN: Yes, your Honor. I usually
16 will send the ALJ a message when we're done.

17 JUDGE BROWN: Okay. That's fine. I will now
18 leave, and the parties can confer. Someone is going to
19 notify me. Thank you. I'll be back.

20 ATTORNEY CALLAGHAN: Thank you.

21 (Recess)

22 JUDGE BROWN: Okay. Good. So now that we're
23 back on the record, and the parties have agreed to a
24 procedural schedule. Can you now read into the record,
25 Mr. Callaghan?

1 ATTORNEY CALLAGHAN: Oh, yes, your Honor. So
2 your Honor, what the parties are proposing is a series of
3 dates for filing briefs that cover both legal and policy
4 issues, as well as prefiled exhibits that do not include
5 testimony.

6 So in our conversation, we felt that this could
7 probably be resolved with briefs on legal and policy issues,
8 but those would need to be supported by some kind of factual
9 record, which is why we are proposing just to include
10 exhibits that are not testimony.

11 But the dates that we had proposed were an
12 initial brief from the company due March 8, a response brief
13 due May 3, and a reply brief from the company on May 23.

14 And then we would need to -- or we had assumed
15 that the commission would want a public comment hearing in
16 this docket. So we were thinking that that would be
17 sometime in June after the reply brief.

18 We were thinking of an evidentiary hearing
19 sometime at the end of June, with a discovery cutoff two
20 weeks before that, and a final date for filing any prefiled
21 exhibits one week before that hearing.

22 And I think I've covered everything. But please
23 jump in if I've missed something.

24 JUDGE BROWN: All right.

25 ATTORNEY ROGALA: Sorry, your Honor.

1 JUDGE BROWN: Give me one second. I just want
2 to -- okay.

3 All right. You said -- can we go back to the
4 very first date, I think it was a March date?

5 ATTORNEY CALLAGHAN: Yes, your Honor.

6 And I also realized that I did not mention that
7 we would request a protective order in the case.

8 But the initial filing deadline for a brief
9 would be March 8.

10 JUDGE BROWN: Okay. I'm just checking the dates
11 against the calendar as you're speaking. So you'll forgive
12 me if there's a slight delay.

13 All right. All right. So the very first date
14 that you have where there is an event is March 8?

15 ATTORNEY CALLAGHAN: Correct.

16 JUDGE BROWN: Okay. So there's nothing before
17 March 8. I thought there was a March 3 or 1st. So maybe I
18 misheard.

19 ATTORNEY CALLAGHAN: Oh, that would be May 3 was
20 our proposal for the response briefs and exhibits from staff
21 and public counsel.

22 JUDGE BROWN: Okay. So the initial briefs are
23 going to be on March 8?

24 ATTORNEY CALLAGHAN: Yes. And that would be
25 just from the company.

1 JUDGE BROWN: Okay. And replies will be in May,
2 May 3?

3 ATTORNEY CALLAGHAN: The response would be
4 May 3.

5 And then the reply from the company would be
6 May 23.

7 JUDGE BROWN: Gotcha. All right. May 23 would
8 be the reply.

9 ATTORNEY CALLAGHAN: Correct. Yes.

10 JUDGE BROWN: Okay. All right. Let me check --
11 all right. Go ahead. So after May 23, what did we have
12 again?

13 ATTORNEY CALLAGHAN: So after May 23, we didn't
14 have any definitive dates because we didn't know what the
15 commission's availability is for a potential -- and I should
16 note we're not even sure if the commission wants an oral
17 argument hearing. But if the commission does, then we were
18 thinking that that would be sometime at the end of June,
19 with the public comment hearing sometime between May 23 and
20 whenever the oral argument hearing would be set.

21 JUDGE BROWN: I will take that into advisement
22 with regard to the oral argument, and how the commissioners
23 would regard -- or feel about an oral argument on this
24 issue, and whether or not it's necessary or will briefs
25 suffice without an oral.

1 ATTORNEY CALLAGHAN: And the only other thing
2 there is is if the commission does set an oral argument, we
3 would ask that the procedural schedule would include a
4 discovery cutoff date two weeks before the hearing, and a
5 prefiled exhibit filing deadline one week before oral
6 argument.

7 JUDGE BROWN: You said prefiled testimony
8 exhibits?

9 ATTORNEY CALLAGHAN: Yes. So the idea there is
10 if after reply, there's other data requests or discovery
11 that we would want the commission to consider, we could
12 include that in the record before the oral argument,
13 essentially.

14 JUDGE BROWN: You were thinking one week before
15 the oral argument for that prefiled testimony to be filed?

16 ATTORNEY CALLAGHAN: So it wouldn't be
17 testimony.

18 We were thinking that in this case, we would
19 limit the exhibits to just exhibits other than testimony.

20 JUDGE BROWN: Okay. And that would be one week
21 before?

22 ATTORNEY CALLAGHAN: Yes.

23 JUDGE BROWN: And a potential end of June oral
24 argument?

25 ATTORNEY CALLAGHAN: Yes, your Honor.

1 JUDGE BROWN: Okay. All right. And any
2 thoughts on the potential date for a final order?

3 ATTORNEY CALLAGHAN: I don't think we've
4 discussed that.

5 JUDGE BROWN: Okay.

6 ATTORNEY CALLAGHAN: Oh, sorry. I did want to
7 include something.

8 JUDGE BROWN: Yes.

9 ATTORNEY CALLAGHAN: So for the public comment
10 hearing, Mr. O'Neill is -- they're typically set at 6:00,
11 and Mr. O'Neill would only be available on Tuesdays and
12 Thursdays. So we would appreciate if it was set on one of
13 those days of the week.

14 JUDGE BROWN: Mr. O'Neill is available which
15 dates for what?

16 ATTORNEY O'NEILL: The public comment hearing in
17 June. After the reply brief is filed, the public counsel
18 will request a public comment hearing on a Tuesday or
19 Thursday in June before the oral argument.

20 JUDGE BROWN: Okay. And -- all right.
21 (Inaudible). So just out of curiosity, with regard to
22 these, we're not (inaudible) but for procedure's sake, with
23 regard to the exhibits that will be exchanged, I take it
24 this will be done -- would they mainly be an exchange of
25 data requests involved in this, or everything will be based

1 on exhibits that the parties will file?

2 ATTORNEY CALLAGHAN: So the Order 1 has allowed
3 for discovery. My assumption is that that would continue in
4 the prehearing conference order.

5 JUDGE BROWN: Okay. (Inaudible).

6 ATTORNEY O'NEILL: And public counsel does
7 request access to discovery.

8 JUDGE BROWN: All right.

9 I'm sorry. Say that last part again. I
10 shouldn't have spoken.

11 ATTORNEY O'NEILL: Public counsel does request
12 access to the discovery rules.

13 JUDGE BROWN: Okay. I see under paragraph 14 of
14 the order. Okay. All right.

15 With regard to conducting discovery, in
16 paragraph 20, parties may conduct discovery pursuant to the
17 commission's discovery rules. All right. It's already
18 covered. All right. So I take it parties will conduct
19 discovery according to the rules.

20 There will be a protective -- I will issue a
21 protective -- I take it this will be a standard protective
22 order?

23 ATTORNEY CALLAGHAN: Yes, your Honor.

24 JUDGE BROWN: Fine. I'll issue a protective
25 order companion or contemporaneous to this order, or,

1 rather, prehearing conference order.

2 Let me see if there's anything that we need for
3 scheduling in order to confirm. All right.

4 So going forward, I guess the next issue we'll
5 address, or parties should be aware of, is that the
6 commission will require that all electronic filing of
7 documents for formal filings -- let me restate that.

8 The commission requires electronic filing of
9 documents for formal filings. And the commission's rules
10 provide for electronic service of documents. So the
11 commission will serve the parties electronically, and
12 parties will serve each other electronically. I take it
13 everyone is clear with that?

14 ATTORNEY CALLAGHAN: Yes, your Honor.

15 JUDGE BROWN: All right. Anyone who has not yet
16 designated a lead representative for service, please do so
17 via e-mail. And e-mail me at my e-mail address at
18 James.Brown@UTC -- probably skip the script here --
19 WA@WA.gov.

20 And if anyone would like to add any names and
21 email addresses of other representatives or support staff
22 what should receive electronic courtesy copies of all
23 documents filed in this proceeding, please e-mail that to us
24 as well.

25 And the deadline for errata sheets to any

1 exhibits may be established in the prehearing conference
2 order.

3 So does anyone have any objection to setting a
4 deadline (inaudible).

5 So at this point, is there anything that we need
6 to address today?

7 Let me ask you this: Is there an anticipation,
8 aside from the oral arguments, because this sounds like this
9 is going to be a completely legal proceeding at this point
10 based on brief --

11 ATTORNEY ROGALA: (Inaudible).

12 JUDGE BROWN: -- And oral argument. So I take
13 it there won't be the need for a hearing beyond that.

14 ATTORNEY ROGALA: Your Honor, I think that's
15 right.

16 JUDGE BROWN: Okay.

17 ATTORNEY ROGALA: From, you know, our
18 perspective, this feels like legal and policy --

19 JUDGE BROWN: Right.

20 ATTORNEY ROGALA: -- around schedule.

21 You know, both Tad and and Nash raise a good
22 point. To the, you know, extent we're raising policy issues
23 that trigger factual representations, there might be the
24 need for an evidentiary hearing.

25 JUDGE BROWN: Right.

1 ATTORNEY ROGALA: I really hope we're going to
2 avoid one. I think this should best be resolved on
3 briefing.

4 But I guess -- and what we had talked about too,
5 you know, is to the extent we need an evidentiary hearing,
6 the burden is on us to, like, ask for an amendment to the
7 procedural schedule --

8 JUDGE BROWN: Okay.

9 ATTORNEY ROGALA: -- and get kind of, like, that
10 track proceeding schedule.

11 But this schedule is assuming we're not going
12 down that path.

13 JUDGE BROWN: Okay. Understood. This does seem
14 as if it's more of a legal question than a fact question at
15 this point.

16 ATTORNEY ROGALA: Yeah, that's right.

17 JUDGE BROWN: So we'll stick to the schedule
18 based on -- under that -- based on that premise.

19 And is there anything else that any of the
20 parties have at this time?

21 Is there anything else we need to address
22 today?

23 Any further questions or comments from the
24 parties?

25 ATTORNEY ROGALA: I don't think from PacifiCorp,

1 your Honor.

2 JUDGE BROWN: Okay. Anyone else?

3 ATTORNEY CALLAGHAN: Nothing from staff, your
4 Honor.

5 ATTORNEY O'NEILL: Nothing from public counsel.

6 JUDGE BROWN: Okay. Great. Then we will issue
7 an order shortly containing the procedural schedule and any
8 other guidelines that will be involved for the disposition
9 of this case. And we are adjourned, and going off the
10 record.

11 (Proceedings concluded at 11:58 a.m.)

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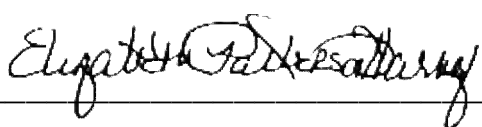

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STATE OF WASHINGTON)
) ss
COUNTY OF KING)

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IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of February, 2024.

Elizabeth Patterson Harvey, CCR 2731