

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION)	DOCKET UE-210402
)	
)	
Complainant,)	THE ALLIANCE OF WESTERN
)	ENERGY CONSUMERS' RESPONSE
v.)	TO COMMISSION STAFF'S MOTION
)	TO STRIKE
PACIFICORP d/b/a PACIFIC POWER & LIGHT COMPANY,)	
)	
)	
Respondent.)	
_____)	

I. INTRODUCTION

Pursuant to WAC 480-07-375, the Alliance of Western Energy Consumers (“AWEC”) hereby responds to the *Motion to Strike on Behalf of Commission Staff* (“Staff”) (“Motion to Strike”) filed April 5, 2022. Staff’s argument places form over function and would obviate existing Commission Rules. Specifically, Staff’s logic would render WAC 480-07-110, the very rule with which Staff asserts AWEC has failed to comply, superfluous. Staff’s reasoning is flawed and inherently contradictory, and as such the Motion should be denied.

II. BACKGROUND

On March 29, 2022, the Washington Utilities and Transportation Commission (“Commission”) issued Order 06, *Final Order Approving and Adopting Settlement Agreement* (“Order”) in Docket UE-210402. Within the Order, the Commission conditioned its acceptance of the Settlement Agreement presented by select parties on specific conditions.

On March 31, 2022, PacifiCorp filed a *Motion for Clarification for Order 06 and to Extend the Timeline to Accept or Reject the Conditions in the Order* (“Motion for Clarification”). Within the Motion for Clarification, PacifiCorp requested the Commission clarify the timing of information required to be included within the PCAM¹ and clarification regarding the functioning of any refund mechanism in the PCAM.²

On April 4, 2022, AWEC filed a Motion for Leave to Respond to PacifiCorp’s Motion for Clarification (“Motion for Leave”), as well as a Response to the Motion for Clarification (“Response”).

On April 5, 2022, Staff filed the Motion to Strike, asserting that AWEC’s Response was “procedurally improper”³ and should be stricken from the record. Staff further asserted that AWEC must wait for an invitation from the Commission to respond to the Motion for Clarification. Finally, Staff challenges AWEC’s Motion for Leave as procedurally improper for its failure to cite WAC 480-07-110. As discussed below, Staff’s logic would render WAC 480-07-110 superfluous. Furthermore, Staff’s concern regarding the lack of a specific reference to WAC 480-07-835 within AWEC’s Motion for Leave places form over substance and claims, without explanation, that AWEC’s Response would “prejudice and be manifestly unfair”⁴ to parties such as Staff. The Commission should not be swayed by Staff’s unsupported hyperbole. The Motion to Strike should be denied.

¹ See Motion for Clarification, Section II(A).

² See Motion for Clarification, Section II(B).

³ Motion to Strike, ¶ 3.

⁴ Motion to Strike, ¶ 5.

III. DISCUSSION

Within the Motion to Strike, Staff's fundamental premise is that WAC 480-07-835(3) does not provide for a response to a motion for clarification without an invitation from the Commission. Indeed, Staff asserts that "in order for a party to properly file a response to a motion for clarification the Commission must first request such a response."⁵ Staff's quotation of the rule is correct. However, Staff's overly rigid application of WAC 480-07-835(3) would obviate the relief afforded within WAC 480-07-110, a rule Staff asserts AWEC violated in seeking leave to file the Response. WAC 480-07-110 specifically provides for the relief AWEC requested within the Motion for Leave: the opportunity to respond to a motion for clarification of Commission order without a Commission request. Therefore, confusingly, Staff contends in one paragraph that no response is permitted absent a Commission invitation, while simultaneously admitting that leave to file an uninvited response can be requested and granted through a motion to the Commission.

Notwithstanding Staff's complaints, it is undisputed between Staff and AWEC that AWEC is in fact allowed to request leave to respond to the Motion for Clarification without waiting for a Commission invitation to do so. Staff and AWEC further agree that any such request must be made via a separate motion, which AWEC without dispute filed. AWEC's Motion for Leave also detailed the basis for AWEC's request to respond to the Motion for Clarification, as required by WAC 480-07-110: PacifiCorp's unnecessary request that the Commission pre-judge the treatment of any potential refund resulting from a prudence

⁵ Motion to Strike, ¶ 3 (emphasis in original).

disallowance related to forecasted net power costs.⁶ Notably, Staff does not take issue with the substance of either AWEC's Motion for Leave or Response. Staff's sole concern is AWEC's oversight in specifically enumerating WAC 480-07-835(3).

Staff's proposed remedy of striking AWEC's Motion for Leave, and therefore prohibiting AWEC's Response, is disproportionate and draconian. AWEC properly enunciated the substantive bases for its actions and request to the Commission, and properly sought leave to respond to PacifiCorp's Motion for Clarification. Furthermore, Staff has failed to enunciate specific "prejudice" and has failed to articulate how consideration of AWEC's proposal regarding the functioning of a refund mechanism in the PCAM is "manifestly unfair." Indeed, AWEC's proposal does not request affirmative action by the Commission, but rather recommends the Commission demur on PacifiCorp's requested clarification until the full context of the potential disallowance amount is fully understood within the context of a PCAM proceeding.

Had AWEC not sought leave to respond to PacifiCorp's Motion for Clarification, it is uncertain whether the Commission would have requested responses or would have considered the concern AWEC raised in its Response. If the Commission then granted PacifiCorp's Motion for Clarification on the issue of how any potential refund would flow through the PCAM, AWEC would then be required to seek reconsideration of the Final Order in this docket, as clarified. This is a far less administratively efficient approach than the process AWEC selected which, contrary to Staff's bald assertion, prejudices no party.

⁶ See Motion for Leave at 2-3.

IV. CONCLUSION

For the reasons detailed above, Staff's Motion to Strike should be denied.

AWEC's pleadings demonstrated constructive compliance with the Commission's procedural rules and demonstrated good cause for AWEC's requested relief. Staff's contradictory claims regarding Commission procedure and unsupported assertions of prejudice resulting from AWEC's permitted actions do not justify striking AWEC's Motion for Leave and its Response.

Dated this 6th day of April, 2022.

/s/ Brent L. Coleman

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