

Docket No. UE-210532 - Vol. I

WUTC v. Pacificorp

August 12, 2021



206.287.9066 | 800.846.6989

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

www.buellrealtime.com

email: info@buellrealtime.com



BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION, DOCKET NO. UE-210532

Complainant,

v.

PACIFICORP, d/b/a PACIFIC POWER
& LIGHT COMPANY,

Respondent.

VIDEOCONFERENCE EVIDENTIARY HEARING BEFORE
ADMINISTRATIVE LAW JUDGE

MICHAEL HOWARD

Volume I

Pages 1 - 24

August 12, 2021

1:31 p.m.

REPORTED BY: CRYSTAL R. McAULIFFE, RPR, CCR, #2121

1 REMOTE APPEARANCES

2 ADMINISTRATIVE LAW JUDGE:

3 MICHAEL HOWARD
4 Utilities and Transportation Commission
5 1300 South Evergreen Park Drive Southwest
6 Olympia, Washington 98504
7 (360) 664-1160
8 michael.howard@utc.wa.gov

9 FOR COMMISSION STAFF:

10 Daniel J. Teimouri
11 Assistant Attorney General
12 Office of the Attorney General
13 P.O. Box 40128
14 Olympia, WA 98504-0128
15 (360) 664-1189
16 daniel.teimouri@utc.wa.gov

17 FOR RESPONDENT PACIFICORP:

18 Carla Scarsella
19 Ajay Kumar
20 Legal Counsel for PacifiCorp
21 PacifiCorp
22 825 NE Multnomah Street,
23 Suite 2000
24 Portland, OR 97232
25 (503) 813-5161
Carla.scarsella@pacificorp.com
ajay.kumar@pacificorp.com

FOR PUBLIC COUNSEL:

Nina M. Suetake
Lisa W. Gafken
Ann Paisner
Assistant Attorney General Washington
Attorney General's Office Public Counsel Unit
800 Fifth Avenue, Suite 2000 Seattle, WA
98104-3188 (206) 389-2055 (206) 464-6595
(206) 521-3211
Nina.suetake@atg.wa.gov
lisa.gafken@atg.wa.gov
ann.paisner@atg.wa.gov

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REMOTE APPEARANCES
(Continued)

FOR ALLIANCE OF WESTERN ENERGY CONSUMERS (AWEC):

Brent L. Coleman
Davison Van Cleve
1750 SW Harbor Way
Suite 450
Portland, OR 97201
971.710.1157
blc@dvclaw.com

FOR THE ENERGY PROJECT:

Yochanan Zakai
Shute Mihaly & Weinberger
396 Hayes Street
San Francisco, California 94102
415.552.7272

1 OLYMPIA, WASHINGTON; AUGUST 12, 2021

2 1:31 p.m.

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4 THE COURT: Let's be on the record. Good
5 afternoon. We're here today for a pre-hearing
6 conference in Docket 210532, which is captioned
7 Washington Utilities and Transportation Commission
8 versus PacifiCorp, doing business as Pacific Power &
9 Light Company.

10 This is Pacific Corp's limited issue rate
11 filing. My name is Michael Howard. I'm an
12 Administrative Law Judge with the Commission and I'll be
13 co-presiding in this matter along with the
14 Commissioners.

15 Let's start by taking appearances and
16 addressing the petitions for intervention.

17 So could we have a short appearance from
18 PacifiCorp.

19 MS. SCARSELLA: Good afternoon, Your Honor.
20 My name is Carla Scarsella appearing on PacifiCorp.

21 THE COURT: Thank you.

22 Did we have an appearance for staff?

23 MR. TEIMOURI: Thank you, Your Honor. Dan
24 Teimouri, Assistant Attorney General, here on behalf of
25 Commission staff.

1 THE COURT: Great. Thank you.

2 And public counsel.

3 MS. PAISNER: Good afternoon, Your Honor.

4 This is Ann Paisner, attorney general -- Assistant
5 Attorney General for public counsel.

6 And also on the line with me today is Nina
7 Suetake, also Assistant Attorney General for public
8 counsel.

9 THE COURT: Thank you.

10 Could we have an appearance for AWEC?

11 MR. COLEMAN: Good afternoon, Your Honor.
12 Brent Coleman of the law firm of Davison Van Cleve on
13 behalf of Alliance of Western Energy Consumers.

14 THE COURT: Thank you.

15 And could we have an appearance for the
16 Energy Project?

17 MR. ZAKAI: Good afternoon, Your Honor.
18 Yochanan Zakai with the firm of Shute Mihaly &
19 Weinberger appearing on behalf of the Energy Project.

20 THE COURT: Great. Thank you, all.

21 So turning next to the petitions for
22 intervention.

23 Are there any petitions for intervention
24 other than the ones that we have received in writing?

25 Hearing none, let's proceed.

1 We have received two petitions to intervene;
2 one from the Energy Project and one from AWEC, the
3 Alliance of Western Energy Consumers.

4 I'm unaware of any written objections in
5 these petitions.

6 Are there any objections anyone would like
7 to raise today?

8 MS. SCARSELLA: No objections from
9 PacifiCorp.

10 MR. TEIMOURI: No objections from staff
11 either.

12 MS. PAISNER: Also, no objection from public
13 counsel.

14 THE COURT: All right. Hearing no
15 objections, the petitions to intervene are granted.

16 So the next main issue we wanted to address
17 today would be the procedural schedule.

18 Before I called today, I e-mailed the
19 parties suggesting possible dates for the hearing and
20 giving guidance for the schedule we might use in this
21 case.

22 Mr. Teimouri e-mailed me this morning and
23 indicated that the parties have agreed on a procedural
24 schedule with a hearing set for December 9th. So I will
25 proceed to read this into the record, and then we can

1 discuss the details of this after I do that.

2 So the schedule starts with the tariff
3 filing on July 1st, 2021, tariff suspended and discovery
4 commenced July 28th, 2021; the prehearing conference on
5 August 12th, 2021; a workshop that is parties only, with
6 an exact date to be determined; a settlement conference,
7 again, parties only, on September 13th, 2021; response
8 testimony being due on October 15th, 2021; and then we
9 have a noticed -- notices issued for public comment
10 hearings 30 days prior to the public comment hearing,
11 and a public comment hearing with a date to be
12 determined. Excuse me. And then rebuttal and
13 cross-answering testimony both being due on
14 November 15th, 2021; a discovery cutoff of
15 November 29th, 2021; and a deadline for filing
16 cross-examination exhibits, witness lists, errata
17 sheets, and e-mailing cross-examination time estimates
18 to presiding LJ on December 7th, 2021.

19 Then we have the hearing on December 9th,
20 2021, at 9:30 a.m. And I would add that with the
21 clarification that would be immediately following our
22 regularly scheduled open meeting at the Commission on
23 that day.

24 Then we have simultaneous post-hearing
25 briefs on January 3rd, 2022. And we have a requested

1 final order date on or before February 1st, 2022.

2 This -- I can tell you at this moment that
3 I'll confirm that this schedule works for the
4 Commission. It generally seems to work. I appreciate
5 the parties working with one of the suggested hearing
6 dates I sent out in my -- a clarification will be after
7 the open meeting.

8 The one area of concern I might like to
9 discuss with the parties today would be the deadline on
10 December -- December 7th for exhibits and. That's only
11 two days before the hearing. That is a pretty short
12 time frame. Normally, we do seven days for that. And,
13 of course, I understand that our cost rate case is on
14 December 3rd, so we have overlapping work loads here.

15 I did want to ask if the parties are able to
16 move this December 7th deadline up a couple days or to
17 the proceeding week to give us more time to review these
18 materials. So could I get the parties' thoughts on
19 that?

20 MS. SCARSELLA: Your Honor, Carla Scarsella
21 for PacifiCorp. Subject to others' thoughts, we would
22 be happy to move up the date. I think the concern is
23 that by the time we get to discovery on the final round
24 of testimony, there's a five-day best efforts turnaround
25 and folks would need to get the response and process

1 that, and then determine whether it needs to be a
2 cross-exhibit or not.

3 So I think if we move up that date, we also
4 have to move up the discovery cutoff date and make sure
5 that those are five -- sometime in between -- a
6 five-business day in between to allow folks to get
7 responses.

8 MR. TEIMOURI: Yeah. This is Dan Teimouri
9 for staff, and I share those sentiments. I think we
10 could -- if there is some time needed for the processing
11 of exhibits on -- you know, on the part of ALD, then
12 that would be fine to move it up, just to
13 correspondently move up the discovery cutoff so that it
14 is five days out, that should work.

15 THE COURT: Before we -- before we continue
16 just for a moment, the court reporter indicated she's --
17 that I'm -- that I'm cutting in and out.

18 Is -- is the court reporter able to hear me
19 all right now?

20 Are we doing okay with that? Okay.

21 MR. COLEMAN: Your Honor -- if I may, I also
22 suffered sort of that in and out as you went through the
23 discussions. Sorry. Brent Coleman on behalf of AWEC.
24 And some of the dates that you -- I think I sort of
25 heard partials of were different than the options that I

1 had on my screen. So perhaps I thought I had the most
2 recent version that the parties circulated around.

3 So if I could ask your indulgence to sort of
4 step back to the settlement conference deadline and move
5 forward for a couple to make sure that I have them. I
6 apologize.

7 THE COURT: No. That's fine. We'll --
8 we'll -- I'll go through this, and then we'll jump back
9 into adjusting those couple points that we were talking
10 about.

11 So the settlement conference, parties only,
12 September 13th, 2021; response to testimony
13 October 15th, 2021; and then the public comment hearing
14 is essentially to be determined with a notice issued
15 30 days prior; and rebuttal and cross-answering
16 testimony on November 15th.

17 Does that sound right to you, Mr. Coleman?

18 MR. COLEMAN: Those are -- that fills in the
19 holes that I had. And there's -- there's just one date
20 there that I was unexpected to hear. I guess, again, I
21 must have been looking at the wrong version that was
22 cycled. So I thought there was a little bit more time
23 on the settlement conference. But perhaps we could come
24 back to that in a moment. But these other issues are
25 probably a little bit more pressing. Thank you.

1 THE COURT: Okay. Yeah, I'm just going off
2 of the parties' schedule, so we can definitely come back
3 to that in a few moments here.

4 So in terms of going back to the issue of
5 moving up the discovery cutoff slightly and moving up
6 the deadline for cross-examination exhibits and other
7 materials, did public counsel like to -- would public
8 counsel like to respond to that?

9 MS. PAISNER: Yes, please. Our concern is
10 that moving the discovery cutoff date of November 29th,
11 it -- it would make the only round of discovery between
12 rebuttal and the discovery cutoff. That's why, as it is
13 right now, there are exactly ten days.

14 So that on the discovery cutoff date parties
15 who had an opportunity to file a second round of data
16 requests that would potentially clarify responses to the
17 first round, which has been something that we've done
18 fairly often. So that's our concern with moving the
19 discovery cutoff date of November 29th.

20 The -- the following date, December 7th, for
21 filing cross-exam exhibits, witness lists, errata
22 sheets, cross-estimates; that is also ten days exactly
23 after November 29th. But we could be willing to move
24 that one back so long as there are a full two -- five
25 day rounds between rebuttal and the discovery cutoff.

1 THE COURT: Okay. So if I understand you
2 right, it sounds like we could -- without affecting
3 that -- the -- the opportunity for two rounds after
4 rebuttal testimony we could move the cross-examination
5 and other materials deadline from the 7th, let's say, up
6 to either the 1st of December or the 6th.

7 What are people's thoughts on that?

8 I think just a couple extra days would be
9 helpful for us, basically.

10 Are there any concerns with that?

11 MR. COLEMAN: Sorry, Your Honor, if I missed
12 something. But then how would -- what would be the new
13 discovery cutoff? Sorry if I missed that.

14 THE COURT: Okay. Well, that would be
15 maintaining the discovery cutoff.

16 MR. COLEMAN: So there would be a potential
17 for items that were -- went, you know, beyond DRs
18 incoming cannot be used as exhibits, potentially.

19 THE COURT: Okay. How about we set it for
20 the 6th? Cross-examination submission on December 6th.
21 I think that would give us adequate time; right?

22 MR. COLEMAN: Yes, sir. I'm for -- all for
23 giving ALD as much time as they feel they need. I mean,
24 you know, I kind of see both sides; right? We want as
25 much discovery as feasible while giving ALD enough time

1 to be comfortable with the exhibits.

2 I think we'll maintain our position that
3 we're fine moving it up a few days if that would -- just
4 to keep everything in terms of the response time
5 matching with the chain.

6 THE COURT: Uh-huh.

7 MS. SCARSELLA: PacifiCorp agrees with that.

8 THE COURT: Okay. And just to clarify,
9 earlier, Ms. Scarsella, you are referring to a
10 shortening of the response period for discovery
11 responses. I didn't see that in the proposed schedule
12 from the parties, so was that as of the filing of the
13 response testimony?

14 MS. SCARSELLA: So, yeah, I -- forgive me,
15 Your Honor. I believe discovery is going to be
16 discussed once we decide -- I think it is going to --
17 we're going to bring that up as a separate matter once
18 we settle on the schedule.

19 So I -- I recommend that maybe with your
20 indulgence we need to discuss the schedule first, and
21 then we can discuss discovery.

22 THE COURT: Okay. Well, for the moment, I'm
23 going to take these issues on the December 7th deadline
24 under advisement. I'm going to consider moving it up a
25 day or a few days. And I'll certainly consider what --

1 what everyone has advanced today. So that was my main
2 concern that I saw with the schedule. Otherwise, I
3 think it's going to work for the Commission.

4 MR. TEIMOURI: Your Honor, if I could bring
5 up one point, just to address AWEC.

6 I do believe you had the correct date there,
7 December 13th. But I just want to confirm with all the
8 parties while we're live that that was the correct date
9 for the settlement conference that we all understood
10 this morning.

11 MS. SCARSELLA: That was my understanding.

12 MS. PAISNER: That was my understanding as
13 well.

14 MR. COLEMAN: Yeah, I apologize. I was
15 looking at sort of the full attachment documents that we
16 had circulated around as opposed to the -- the movement
17 from a prior date to September 13th in the text of an
18 e-mail got overlooked in the flurry of exchanges that
19 has gone on before today. And our -- our thoughts on
20 that is just -- just for what it's worth is just to
21 allow for a -- as much of a meaningful participation and
22 development of issues prior to that -- to that date.

23 I'm not really sure if a slight delay on
24 that would necessarily need to affect any of the other
25 testimonial deadlines. So -- but I guess to the extent

1 that everyone is -- is unwilling to make a move to bump
2 that just a little bit, you know, I can accept it.

3 But it was just -- again, that's the
4 rationale behind our thinking is just trying to get as
5 much due diligence as we can with respect to the case to
6 allow the most productive settlement conference
7 participation as possible.

8 THE COURT: And I can understand that. I
9 think -- we normally include language to the effect that
10 the parties can alter that date with written notice to
11 the Commission. So I'll make sure that I include
12 language to that effect in the order. But we can -- we
13 can use the parties agreed date for now. If the parties
14 want to move that later -- later on, that's -- that's
15 certainly within their prerogative.

16 MR. COLEMAN: I appreciate that, Your Honor.
17 Again, I'm not going -- I'm not going to box up the
18 burden that came to get to where we are, because it was
19 rather significant and there was a lot of flurry.

20 So I would certainly be happy to take the
21 13th. And to the extent that if, you know, we need to
22 address that offline, I can do so with the parties. So
23 I appreciate that. Thank you.

24 THE COURT: All right. Were there any other
25 concerns about the procedural schedule before we address

1 the issue of discovery that Ms. Scarsella raised?

2 MR. ZAKAI: Your Honor, Yoshi Zakai for The
3 Energy Project. If I could just briefly express a
4 preference that if we are going to move the
5 cross-examination exhibit date that one day to
6 December 6th would be our preference. Thank you.

7 THE COURT: Okay. Thank you.

8 Does -- I see public counsel has their hand
9 raised.

10 MS. SCARSELLA: I apologize. I think that's
11 left over from earlier. But I would also request that
12 that date only be moved up to the 6th so that we
13 wouldn't have to have data request responses pending
14 before we would be able to offer them into the record.
15 That would be our request. Thank you.

16 THE COURT: Okay. So, again, I anticipate
17 the schedule will work for the Commission. But I will
18 take these different issues under advisement and we will
19 be issuing an order soon.

20 Did PacifiCorp want to raise issues around
21 discovery?

22 MS. SCARSELLA: Yes, Your Honor. PacifiCorp
23 is proposing, regarding discovery in this proceeding,
24 that up until the filing of response testimony on
25 September 15th that the company use ten days -- ten

1 business days or seven business days best efforts to
2 respond.

3 And then upon the filing of response
4 testimony on October 15th, that five business days be
5 used as response time for discovery. We -- we make this
6 request for several reasons.

7 You know, in the initial phase of any
8 proceeding, sets of discovery can be long and have
9 multi- -- multiple subparts. It could require
10 voluminous data to be collected and produced in
11 response. After all, it is parties conducting their
12 investigation of our initial filing. I don't want to
13 put the company in a position where we are seeking
14 extensions from parties or that we're being late all the
15 time on discovery.

16 Another issue we -- for that -- for that
17 initial ten days, seven days best effort is that becomes
18 a workload issue for our folks. We have people working
19 in six jurisdictions. And I understand that, you know,
20 we're responsible for all our filings, including our
21 filings in Washington, but it does become a workload
22 issue for the folks responding to discovery.

23 And then finally, as I expressed to parties
24 already, given the expedited nature of this filing, if
25 there are questions about the filing or follow-ups to

1 discovery, I encourage everyone to reach out to me
2 and -- where I can facilitate meetings with witnesses
3 and the respective experts for the parties to discuss
4 questions on the filings or respond to clarifications on
5 data request responses, I think that will ultimately be
6 the best way to streamline the discovery process;
7 especially when we're on a -- a shortened time frame
8 such as this proceeding.

9 So that's why we're -- we ask that ten
10 business days, seven days best -- seven business days
11 best efforts. And then five days best efforts, business
12 days, best efforts upon the filing of response
13 testimony. But I believe others have different
14 opinions.

15 THE COURT: Thank you. I did want to
16 clarify with you, whether the -- after the filing
17 response testimony it would be based on best efforts for
18 the five day and you just indicated that.

19 Would any of the other parties like to
20 respond to this?

21 MS. PAISNER: This is Ann for public
22 counsel. I suppose I would want some clarification,
23 because I -- seven days best efforts and then five days
24 best efforts, if you already have the caveat of best
25 efforts, I wonder if it is a bit redundant and if it

1 could just be five days best efforts as it is for the
2 P. Corp, which is filed a month earlier and is a much
3 smaller filing.

4 MS. SCARSELLA: May I, Your Honor?

5 THE COURT: Certainly.

6 MS. SCARSELLA: Well, for the P. Corp., to
7 be clear, up until the filing of response testimony,
8 it's ten days. And then upon filing of response
9 testimony, it becomes five business days best efforts.

10 THE COURT: That is my recollection as well.
11 Any other points from the parties?

12 MS. PAISNER: If I may, again, this is Ann
13 Paisner. This is a much larger filing than the P. Corp.
14 There are -- the P. Corp has fewer and shorter testimony
15 documents and fewer exhibits, fewer work papers.
16 There's just more here to wade through.

17 A five-day turnaround would be very helpful
18 for us to actually sufficiently address the issues here.
19 That would be our request.

20 MS. SCARSELLA: May I respond, Your Honor?

21 THE COURT: Certainly.

22 MS. SCARSELLA: Well, I -- I first would
23 like to note this is an offshoot. This proceeding is an
24 offshoot of our 2019 federal case. A large part of the
25 information that was filed here was pulled from that

1 case.

2 As according to the settlement agreement
3 that was approved by the Commission, parties agreed that
4 a handful of projects that weren't in service as of
5 May 1st, 2020 -- 2020, would be part of this filing so
6 parties would have time to review.

7 So we're talking about a handful of
8 projects. The majority of information, you know -- you
9 know, is largely the same as what was in our general
10 rate case. We filed this on -- on July 1st, about six
11 weeks ago. We met with parties before the filing to
12 give them an -- to provide an overview of the filing, as
13 well as to answer any preliminary questions.

14 And I note, discovery has already started.
15 Staff reached out. They -- they started discovery and
16 we're -- we've started.

17 So I would think where the P. Corp is new --
18 where no one has seen that before -- this represents
19 projects that most parties have received -- received a
20 preview if they were involved in our 2019 general rate
21 case.

22 So it's a very limited scope. And, again,
23 the company is ready, willing, and able to meet with any
24 parties to help answer questions about the initial
25 filing and to meet with the parties once they receive

1 discovery, plus to help short-circuit any discovery
2 follow-ups that may be required.

3 So we -- we would continue to recommend ten
4 business days to start with seven days best efforts.

5 THE COURT: Okay. Would any of the other
6 parties like to address this issue?

7 Mr. Zakai.

8 MR. ZAKAI: Yes, Your Honor. Thank you.

9 We would support public counsel's request.
10 Thank you.

11 MR. TEIMOURI: Your Honor, so while, you
12 know, staff would obviously appreciate more time to
13 conduct discovery, we have worked through this with the
14 company previously and understand their position. We're
15 not going to argue for more time for a discovery
16 turnaround for shorter time, but, you know, I think we
17 can accept what was being proposed by the company with
18 the five-day -- with the caveat that we go to a five-day
19 after responsive testimony.

20 THE COURT: I'm going to take these issues
21 under advisement. I think because, in any event, we
22 have the best-efforts qualification, the difference
23 between seven days best efforts and five days best
24 efforts for a certain period of the case I don't think
25 is going to make or break any parties' preparation. But

1 I'm going to think about the issue a little bit further
2 and it will be addressed in the order.

3 MS. SCARSELLA: Thank you, Your Honor.

4 THE COURT: Yes. Were there any other
5 concerns or questions or issues on discovery before we
6 continue?

7 MS. SCARSELLA: The company has nothing
8 further.

9 THE COURT: Hearing none, we will continue.

10 We just have a few more housekeeping matters
11 on the issue of a protective order. I will remind the
12 parties, as they are likely already aware, that we have
13 entered a protective order in this docket.

14 The Commission also uses electronic filing
15 documents for formal filings. We are continuing to
16 suspend the requirements for paper copies of filed
17 documents in light of the COVID-19 pandemic and that
18 will be addressed in the order following this
19 pre-hearing conference.

20 And also, the Commission's rules provide for
21 electronic service of documents. The Commission will
22 serve the parties electronically and the parties will
23 serve each other electronically.

24 If any party has not yet designated a lead
25 representative for service, please do so via an e-mail

1 to me as soon as possible. My e-mail is
2 michael.howard@utc.wa.gov.

3 Also, if anyone would like to add names and
4 e-mail addresses of other representatives or support
5 staff who should receive electronic producing copies of
6 all documents filed, please e-mail that to me as well.

7 For errata sheets, I see that we have
8 already addressed the issue of errata sheets, actually,
9 in the parties' proposed schedule. So I will skip that.

10 Is there anything else that we should
11 address today before we adjourn?

12 All right. Hearing none -- hearing no
13 questions or concerns, we'll issue an order shortly
14 containing the procedural schedule and other guidelines
15 for the disposition of this case. We are adjourned.

16 Thank you.

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18 (The proceedings adjourned at 1:58 p.m.)

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