

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 352

In the Matter of
PACIFICORP, dba PACIFIC POWER,
2019 Renewable Adjustment Clause.

PREHEARING CONFERENCE
MEMORANDUM

On January 23, 2019, the Public Utility Commission of Oregon held a prehearing conference in this docket. Representatives appeared on behalf of PacifiCorp, dba Pacific Power; Calpine Energy Solutions, LLC; Oregon Citizens' Utility Board (CUB); Alliance of Western Energy Consumers (AWEC); and Commission Staff.

Petitions to Intervene

Prior to the conference, AWEC filed a petition to intervene in this docket. No party attending the conference objected to the petition. After the conference, Calpine Solutions filed a petition to intervene, noting that it had contacted PacifiCorp, CUB, AWEC, and Staff and that no one opposed its intervention. On February 1, 2019, CUB filed a notice of intervention as allowed under ORS 774.180.

I find that AWEC and Calpine Solutions have sufficient interest in the proceedings to participate and that their participation will not unreasonably broaden the issues, burden the record, or delay the proceedings.¹ The petitions to intervene are therefore granted.

Procedural Schedule

At the prehearing conference, the parties did not agree on a procedural schedule and instead presented two versions of a schedule for me to consider, in consultation with the Chief Administrative Law Judge. Staff, AWEC, CUB, and Calpine Solutions prefer five rounds of testimony while PacifiCorp prefers three rounds. At the conference all parties explained their reasoning, and Staff and PacifiCorp also filed written comments. Below I explain the difference in these two schedules, summarize PacifiCorp's and Staff's arguments, and conclude that five rounds of testimony is reasonable for this proceeding.

¹ See OAR 860-001-0300(6).

The main difference between three rounds of testimony and five rounds of testimony is that Staff and intervenors submit two sets of testimony with a five-round procedural schedule, and only one set of testimony with a three-round procedural schedule. When Staff and intervenors submit two sets of testimony, the earlier (opening) testimony is generally more expansive covering a range of arguments. The second set of testimony is typically narrower and briefer, responding to the company's reply testimony and cross-answering intervenors' testimony, and generally does not raise new arguments.

For this proceeding, including the extra two sets of testimony (Staff and intervenor rebuttal/cross-answering and PacifiCorp surrebuttal) shifts key events in the schedule approximately three weeks later than they would occur under a procedural schedule with three rounds of testimony. However, the dates for the Commission decision and new rates remain the same.

PacifiCorp states that three rounds of testimony is consistent with previous Renewable Adjustment Clause (RAC) cases, promotes efficiency and eases the burden on the Commission and stakeholders, while providing sufficient time for parties to develop a strong record for the Commission. PacifiCorp explains that it has already provided substantial initial testimony and workpapers, and the repowering projects that are the subject of this proceeding were included in PacifiCorp's 2017 Integrated Resource Plan (IRP) and 2019 Transition Adjustment Mechanism (TAM). PacifiCorp concludes that compressing an extra two rounds of testimony towards the end of this process will not provide a stronger record and will increase the burden on parties.

Staff states that five rounds of testimony is appropriate because this proceeding involves a prudence review of a substantial capital investment. Staff believes the repowering projects are complex, unprecedented, and were controversial among parties during initial review in the 2017 IRP. Staff concludes that the a five-round schedule will allow it to develop a robust record and engage in back in forth that may be helpful for Commission review.

I find that five rounds of testimony is reasonable for this proceeding. The five-round schedule is similar to the three-round schedule in that it provides the most time early in the schedule for parties to engage in discovery and develop opening testimony. I view the extra two rounds of testimony towards the end of the process as a backstop to ensure a robust record. These additional rounds provide Staff and intervenors the opportunity to respond to PacifiCorp's reply testimony (and each other, as needed) and allow for a final round from PacifiCorp.

Although I find five rounds of testimony is reasonable for this proceeding, my decision is specific to the circumstances here. In the future, I encourage the parties to continue considering what type of schedule works best for any given proceeding.

The below schedule is adopted:

EVENT	DATE
Staff and Intervenor Opening Testimony	April 2, 2019
Settlement Conference ²	April 11, 2019
PacifiCorp Reply Testimony	May 8, 2019
Staff and Intervenor Rebuttal and Cross-Answering Testimony	June 3, 2019
PacifiCorp Surrebuttal Testimony ³	June 24, 2019
All Parties Cross Examination Statements	July 1, 2019
All Parties Cross-Examination Exhibits	July 3, 2019
Hearing	July 8, 2019
PacifiCorp Opening Brief	July 22, 2019
Staff and Intervenor Response Brief	August 5, 2019
PacifiCorp Reply Brief	August 14, 2019
Target Commission Decision	September 15, 2019
Effective Date for first rate change	October 1, 2019
Revised Tariff Sheet Filing	November 1, 2019
Effective Date for second rate change	December 1, 2019

Parties are reminded that attorneys not licensed in Oregon wanting to appear before the Commission in this docket must file an application for admission to appear pro hac vice.⁴

Dated this 14th day of February, 2019, at Salem, Oregon.

Sarah Rowe
Administrative Law Judge

Attachment: Notice of Contested Case Rights and Procedures

² The settlement conference date is included for convenience and may be changed by the parties.

³ Regarding discovery, the parties agree to expedited discovery as follows: 7 calendar day, best efforts following PacifiCorp's reply testimony, and 5 calendar day, best efforts following PacifiCorp's surrebuttal testimony.

⁴ See UTCR 3.170, OAR 860-001-0320.

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Oregon law requires state agencies to provide parties written notice of contested case rights and procedures. Under ORS 183.413, you are entitled to be informed of the following:

Hearing: The time and place of any hearing held in these proceedings will be noticed separately. The Commission will hold the hearing under its general authority set forth in ORS 756.040 and use procedures set forth in ORS 756.518 through 756.610 and OAR Chapter 860, Division 001. Copies of these statutes and rules may be accessed via the Commission's website at www.puc.state.or.us. The Commission will hear issues as identified by the parties.

Right to Attorney: As a party to these proceedings, you may be represented by counsel. Should you desire counsel but cannot afford one, legal aid may be able to assist you; parties are ordinarily represented by counsel. The Commission Staff, if participating as a party in the case, will be represented by the Department of Justice. Generally, once a hearing has begun, you will not be allowed to postpone the hearing to obtain counsel.

Administrative Law Judge: The Commission has delegated the authority to preside over hearings to Administrative Law Judges (ALJs). The scope of an ALJ's authority is defined in OAR 860-001-0090. The ALJs make evidentiary and other procedural rulings, analyze the contested issues, and present legal and policy recommendations to the Commission.

Hearing Rights: You have the right to respond to all issues identified and present evidence and witnesses on those issues. *See* OAR 860-001-0450 through OAR 860-001-0490. You may obtain discovery from other parties through depositions, subpoenas, and data requests. *See* ORS 756.538 and 756.543; OAR 860-001-0500 through 860-001-0540.

Evidence: Evidence is generally admissible if it is of a type relied upon by reasonable persons in the conduct of their serious affairs. *See* OAR 860-001-0450. Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on grounds that the evidence is unreliable, irrelevant, repetitious, or because its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay. The order of presenting evidence is determined by the ALJ. The burden of presenting evidence to support an allegation rests with the person raising the allegation. Generally, once a hearing is completed, the ALJ will not allow the introduction of additional evidence without good cause.

Record: The hearing will be recorded, either by a court reporter or by audio digital recording, to preserve the testimony and other evidence presented. Parties may contact the court reporter about ordering a transcript or request, if available, a copy of the audio recording from the Commission for a fee set forth in OAR 860-001-0060. The hearing record will be made part of the evidentiary record that serves as the basis for the Commission's decision and, if necessary, the record on any judicial appeal.

Final Order and Appeal: After the hearing, the ALJ will prepare a draft order resolving all issues and present it to the Commission. The draft order is not open to party comment. The Commission will make the final decision in the case and may adopt, modify, or reject the ALJ's recommendation. If you disagree with the Commission's decision, you may request reconsideration of the final order within 60 days from the date of service of the order. *See* ORS 756.561 and OAR 860-001-0720. You may also file a petition for review with the Court of Appeals within 60 days from the date of service of the order. *See* ORS 756.610.