

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UE 433

In the Matter of

PACIFICORP dba PACIFIC POWER,

Request for a General Rate Revision  
(UE 433).

ORDER

DISPOSITION: MOTION TO ENFORCE RULING DENIED

**I. BACKGROUND**

On August 5, 2024, the Administrative Law Judge (ALJ) assigned to this docket issued a ruling granting Victor Palfreyman and the *James v. PacifiCorp* certified class's motion to intervene with conditions. The ALJ's ruling granted the petition with "the conditions that they abide by the existing procedural schedule \* \* \* and that their participation is limited to discovery, testimony, exhibits, and arguments related to the Catastrophic Fire Fund."<sup>1</sup> The ALJ ruling also declined to "impose conditions or requirements on Mr. Palfreyman's participation in any settlement meetings between the parties" and explained that concern about the viability of settlement with the arrival of a new party "does not serve as grounds to exclude a party."<sup>2</sup>

On August 22, 2024, PacifiCorp filed a motion to enforce the terms of the conditional intervention ruling for Victor Palfreyman, on behalf of the *James* class, requesting expedited consideration. The ALJ shortened the time for responses to the motion and PacifiCorp's reply.

PacifiCorp's motion asserts that the company withdrew its Catastrophic Fire Fund proposal and because the *James* class's intervention was limited to participation on issues related to the Catastrophic Fire Fund, the basis for its party status no longer exists. PacifiCorp explains that it believes the *James* class has ignored the conditions on its intervention and that its continued participation in this docket will unreasonably broaden

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<sup>1</sup> ALJ Ruling Granting Palfreyman Petition to Intervene at 5 (Aug. 5, 2024).

<sup>2</sup> *Id.*

the issues and burden the record, as well as impede the potential settlement of issues. PacifiCorp expresses concern about participating in a general rate case, and specifically settlement negotiations, with counsel for a party that has obtained a civil judgment against the company. The motions asks that the Commission: (1) terminate the *James* class's conditional party status; (2) withdraw the acceptance of the *James* class's opening testimony and exhibits and remove the testimony from the record; (3) remove the *James* class's rebuttal testimony and exhibit from the record; and (4) grant PacifiCorp's request for expedited consideration of its motion. PacifiCorp also requests that should the Commission deny its requests regarding testimony and exhibits that it be allowed to supplement its surrebuttal testimony.

On August 27, 2024, Mr. Palfreyman and the *James* class responded in opposition to PacifiCorp's motion. Mr. Palfreyman argues that PacifiCorp has not formally withdrawn the Catastrophic Fire Fund proposal and that it is possible the issue could still come up in this docket. Mr. Palfreyman asserts that although PacifiCorp states it withdrew the Catastrophic Fire Fund proposal, the company still filed reply testimony on the proposal and also explains he believes the proposal is intertwined with insurance issues in the general rate case. The filing asserts that Mr. Palfreyman and the *James* class has not sought discovery in this case. Further, Mr. Palfreyman asserts he has not impeded settlement, but rather it is the company that has refused to participate in settlement discussions while counsel for the *James* class is present.

The Alliance of Western Energy Consumers (AWEC) and the Oregon Citizens' Utility Board (CUB) also filed responses in opposition to PacifiCorp's motion on August 27, 2024. The AWEC and CUB filing explained they believed it was PacifiCorp, not Mr. Palfreyman, that "derailed" settlement discussion in this general rate case. The filing further explains that they do not believe the company would be disadvantaged by Mr. Palfreyman's counsel participating in settlement discussions and that even if there was such a risk, Commission rules and the Oregon Evidence Code do not allow the disclosure of settlement discussions and offers to compromise as evidence in a proceeding. AWEC and CUB object to PacifiCorp's request to remove Mr. Palfreyman's rebuttal testimony, noting they believe that testimony is directly relevant to contested issues in the case, including the prudence of including wildfire costs deferred in Docket No. UM 2116 in this case. Finally, AWEC and CUB notes that while PacifiCorp requested to remove the Catastrophic Fire Fund from this case, the issue remains in testimony, and it is possible that it could still be addressed in some way in a Commission order.

On August 28, 2024, PacifiCorp filed a reply. In it, the company reiterated its position that it had removed the Catastrophic Fire Fund proposal from this rate case and that the

proposal would not be part of settlement discussions in this case. The company offered to: “(1) re-affirm its removal of the CFF from consideration in its surrebuttal testimony; (2) promptly move to withdraw Schedule 193 through a letter filing; and (3) take any other steps the Commission deems necessary to ‘formally withdraw’ the CFF issue from this case” and asks that the Commission explicitly acknowledge the withdrawal of the Catastrophic Fire Fund in this proceeding.<sup>3</sup> The company also argues that the Catastrophic Fire Fund is not related to other wildfire issues in this general rate case and that it will be proposing in rebuttal testimony the “continued deferral of several million dollars of system restoration costs that are associated with the fires underlying the *James* verdicts.”<sup>4</sup> PacifiCorp also asserts that AWEC and CUB’s desire to use Mr. Palfreyman’s testimony for non-Catastrophic Fire Fund issues supports the company’s motion, noting that if AWEC and CUB thought such information was relevant and necessary to its arguments, they could have submitted it as part of their own testimony.

## II. DISCUSSION

Here, we are asked to take the drastic action of terminating a party’s ability to participate in the Commission proceedings. We do not take this request lightly.

The underlying petition to intervene noted that Mr. Palfreyman and the *James* class sought intervention to raise issues “including that *James* class members have a long-established right to damages under Oregon law for economic, noneconomic, and punitive damages and that the establishment of the Catastrophic Fire Fund is contrary to that right.”<sup>5</sup> The ALJ ruling granting Mr. Palfreyman and the *James* class’s petition to intervene over PacifiCorp’s objections was clear that in granting the petition, it was “limited to discovery, testimony, exhibits, and arguments related to the Catastrophic Fire Fund.”<sup>6</sup> The ALJ noted that the ruling was in-part premised on the fact that it was “unclear whether any Catastrophic Fire Fund-related issues will continue to be addressed in this proceeding by the parties.”<sup>7</sup> The ALJ ruling also denied PacifiCorp’s motion to strike testimony on the grounds that it was premature.<sup>8</sup>

PacifiCorp now asks us to assess the relevance of testimony and exhibits filed in this case in advance of the evidentiary hearing and before reviewing the parties’ briefing in this docket on the grounds that it has withdrawn a proposal. Although we encourage parties to settle and withdraw issues from contested cases, we cannot agree that a utility can

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<sup>3</sup> PacifiCorp Reply on Motion to Enforce at 4 (Aug. 28, 2024).

<sup>4</sup> *Id.* at 5.

<sup>5</sup> Palfreyman Petition to Intervene at 2 (June 28, 2024).

<sup>6</sup> ALJ Ruling Granting Palfreyman Petition to Intervene at 5 (Aug. 5, 2024).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 6.

singularly determine who can and cannot participate in Commission proceedings based on its own procedural maneuvering. We also agree that situations can arise where it is appropriate to terminate a party's status in a Commission docket.

Here, at the time Mr. Palfreyman filed the underlying petition to intervene, the Catastrophic Fire Fund was a live issue in these proceedings. PacifiCorp then explained in testimony filed nearly one month later that it was removing funding for the Catastrophic Fire Fund from this docket and that it would open a new docket in the future to pursue the creation of a Catastrophic Fire Fund after it could be developed further and to address recent developments in other states.<sup>9</sup> The ALJ considered this in granting the petition to intervene with the condition that participation be limited to issues related to the Catastrophic Fire Fund.

PacifiCorp now states that it will do whatever the Commission deems necessary to formally withdraw the Catastrophic Fire Fund from this docket. PacifiCorp's request is unusual, but we agree that it has withdrawn the Catastrophic Fire Fund from its request in this docket and we will not address it in our order resolving this docket.

Despite that conclusion, we do not agree that terminating Mr. Palfreyman's and the *James* class's party status and withdrawing or removing testimony is warranted. The ALJ has not established a record in this docket and will not do so until after the evidentiary hearing. At that time, if a party believes that any testimony and/or exhibits sought to be admitted to the evidentiary record in this docket does not meet our rules for relevant evidence, they may oppose the request and the ALJ will consider and rule on the arguments. Until that time, it would be premature to judge the relevance of evidence and arguments, or otherwise constrain a party's strategy in this docket. Assessing the relevance of arguments, testimony, and exhibits is best done through our usual evidentiary process as outlined in our rules and this docket's procedural schedule, not through expedited motions practice. Even if material is admitted as evidence by the ALJ, it is our job to ascertain the weight we give to that evidence, a task we are well-equipped to do.

This conclusion is particularly warranted because other issues and proposals in this docket may be related to the Catastrophic Fire Fund and/or the testimony and exhibits filed by Mr. Palfreyman. PacifiCorp admits that some of its proposals may be related to the Catastrophic Fire Fund, although it notes they are "only tangentially related."<sup>10</sup> We reiterate, however, that we only conclude that this is possible, not certain. Further, allowing Mr. Palfreyman and the *James* class to remain as limited parties in this docket

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<sup>9</sup> PAC/2300, Steward/3-8.

<sup>10</sup> PacifiCorp Motion to Enforce at 5 (Aug. 22, 2024).

preserves their ability to object to a potential future settlement agreement should that agreement impact their interests in this docket as defined by the August 5, 2024 ALJ ruling. We note, however, that denying the request to terminate party status does not mean we will entertain arguments from that party going beyond those related to the Catastrophic Fire Fund.

Although we deny PacifiCorp’s motion seeking to terminate party status and withdraw or remove testimony and exhibits, we recognize PacifiCorp’s concerns regarding the settlement process. We believe our existing rules and procedures provide the parties with sufficient options to pursue settlement of issues, including those involving material subject to a protective order, and expect the parties to continue to explore and pursue those options.

Finally, we direct the Administrative Hearings Division to establish a deadline for PacifiCorp to promptly supplement its surrebuttal testimony.

**III. ORDER**

IT IS ORDERED that PacifiCorp’s motion to motion to enforce the terms of the conditional intervention ruling for Victor Palfreyman, on behalf of the *James* class, is denied and the Administrative Hearings Division is directed to establish a deadline for PacifiCorp to supplement its surrebuttal testimony.

Made, entered, and effective Aug 30, 2024.



**Megan W. Decker**  
Chair



**Letha Tawney**  
Commissioner



**Les Perkins**  
Commissioner

