

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 2345

In the Matter of

PACIFICORP dba PACIFIC POWER,

Continual Progress Towards House Bill  
2021.

ORDER

DISPOSITION: ORDER NO. 25-098 AMENDED; APPLICATION FOR  
RECONSIDERATION DENIED

**I. SUMMARY**

This order addresses two matters with the potential to result in clarification or amendment of Order No. 25-098 (Phase I Order). First, under authority provided by ORS 756.658, we amend the requirements of the Phase I Order. Second, we deny the application for reconsideration of the Phase I Order submitted by Sierra Club, Mobilizing Climate Action Together (MCAT), the Green Energy Institute at Lewis and Clark Law School (GEI), and Northwest Energy Coalition (NWECC) (collectively, Applicants).

**II. BACKGROUND AND PROCEDURAL HISTORY**

This proceeding arose from docket LC 82, where we found that PacifiCorp dba Pacific Power's (PacifiCorp) Clean Energy Plan (CEP) did not show continual progress towards meeting HB 2021's emissions reduction targets. We opened this contested case docket to adjudicate our legal authority to order PacifiCorp to issue a Request for Proposals (RFP), establish a date certain by which PacifiCorp must issue an RFP to market, and address the volume and nature of resources PacifiCorp seeks in the RFP.

We adopted a phased schedule, with the first phase intended to resolve threshold legal questions related to the Commission's legal authority to order a utility to undertake several steps related to resource procurement and the legal implications of such a decision. We concluded that first phase with the Phase I Order .

In the Phase I Order, we addressed the threshold legal issues and concluded that this Commission has the authority to direct PacifiCorp to issue an RFP and review the bids resulting from such an RFP.<sup>1</sup> We chose not to exercise that authority, however, noting that PacifiCorp had indicated plans to issue an RFP by June 1, 2025. Instead, we ordered PacifiCorp, should it fail to issue an RFP by June 1, 2025 or later decide to cancel it, to show cause why we should not find the company out of compliance with HB 2021 and direct it to take steps to remedy its noncompliance by issuing an RFP consistent with the Commission's RFP guidelines.<sup>2</sup> We stated that PacifiCorp's show cause filing, if made, "will initiate an expedited evidentiary phase in this contested case docket, and will include \* \* \* the opportunity for other parties to rebut PacifiCorp's evidence. As part of its filing, PacifiCorp may, as discussed below, present additional evidence and raise factual, legal, and policy concerns to afford due process."<sup>3</sup>

On May 7, 2025, Applicants filed an application for reconsideration regarding what they allege are legal errors in the Phase I Order. On May 22, 2025, PacifiCorp and the Alliance of Western Energy Consumers (AWEC) filed responses to the application.

At our May 27, 2025, Public Meeting, we directed the Administrative Hearings Division to conduct an expedited process to determine whether the Phase I Order should be amended so that PacifiCorp's filing of an RFP by June 1, 2025 would be sufficient to avoid the requirement that it make a show-cause filing. On June 4, 2025, comments on that possible amendment were submitted by Commission Staff; PacifiCorp; and Sierra Club, MCAT, GEI, CUB, Renewable Northwest (RNW), and NWEA (collectively, Joint Commenters).

### III. APPLICABLE LAW

ORS 756.568 provides that the Commission may at any time, upon notice, rescind, suspend or amend any order made by the Commission.

ORS 756.561 allows any party to seek rehearing or reconsideration of any Commission order within 60 days from the date of service of such order. OAR 860-001-0720(3) provides that the Commission may grant an application for rehearing or reconsideration upon a showing that there is:

- a) New evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order;

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<sup>1</sup> Phase I Order No. 25-098, at 17 (Mar. 12, 2025).

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

<sup>3</sup> *Id.* at 1.

- b) A change in the law or policy since the date the order was issued relating to an issue essential to the decision;
- c) An error of law or fact in the order that is essential to the decision; or;
- d) Good cause for further examination of an issue essential to the decision.

#### IV. DISCUSSION

##### A. Amendment of *Phase I Order*

###### 1. *Positions of the Parties*

No party objects to the proposed amendment of the Phase I Order to direct PacifiCorp to show cause if it fails to file, rather than fails to issue, an RFP by June 1, 2025. Staff states that such an amendment allows the Commission to retain flexibility to consider the draft RFP filed by PacifiCorp in docket UM 2383 and to address any deficiencies it might identify in PacifiCorp's approach in either docket, as may be appropriate. PacifiCorp requests that we amend the Phase I Order to change each instance of "issue an RFP," to instead read "file an RFP." Joint Commenters express concerns regarding the RFP filed by PacifiCorp in docket UM 2383 and state their belief that "utilizing Docket No. UM 2383 to investigate and resolve these issues, rather than spending Commission resources on a show cause proceeding, is the appropriate course of action."<sup>4</sup>

###### 2. *Resolution*

We agree with the parties that for the best management of these proceedings and docket UM 2383, the Phase I Order should be amended. PacifiCorp's proposal to replace each instance of "issue an RFP" with "file an RFP," however, is overbroad. We do not alter our conclusion that "[t]his Commission has the authority to direct PacifiCorp \* \* \* to issue a[n RFP] and review the bids resulting from such an RFP,"<sup>5</sup> nor the legal analysis supporting that conclusion. And should PacifiCorp cancel the pending RFP, it will be required to show cause why we should not direct it to *issue* an RFP.

Accordingly, Order No. 25-098 is amended by striking each instance of "fail to issue" and replacing it with "fail to file."

##### B. Application for Reconsideration of *Phase I Order*

###### 1. *Positions of the Parties*

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<sup>4</sup> Joint Commenters response at 3.

<sup>5</sup> Phase I Order No. 25-098 at 17.

Applicants argue the Phase I Order contains three errors of law that were essential to our decision. First, they claim that the Phase I Order fails to articulate a rational connection between our factual finding in docket LC 82, Order No. 24-297, that PacifiCorp was not making continual progress and what Applicants term “the legal conclusion in [the Phase I Order] that instructing PacifiCorp to show cause should it not issue a[n RFP] would remedy that finding.”<sup>6</sup> They are concerned, moreover, that PacifiCorp can avoid showing cause by issuing “*any* RFP, regardless of whether it is tailored in any way to achieving incremental reductions in [Oregon] emissions.”<sup>7</sup>

Applicants add that we have committed two additional legal errors by failing in the Phase I Order to fulfill our legal obligations under ORS 469A.415(6) to “ensure that an electric company demonstrates continual progress; and to ensure an electric company is taking actions as soon as practicable that facilitate rapid reduction of greenhouse gas emissions at reasonable costs.”<sup>8</sup> Applicants do not believe that PacifiCorp has been afforded insufficient process, but even were that the case, they claim:

“the Commission cannot evade fulfilling its statutory duties under ORS 469A.415(6) by failing to provide that process to PacifiCorp. Instead, the Commission was legally required by ORS 469A.415(6) to provide whatever process the Commission deemed necessary to fulfill its statutory obligation to ensure that PacifiCorp demonstrates continual progress and is taking actions as soon as practicable that facilitate rapid reduction of greenhouse gas emissions at reasonable costs.”<sup>9</sup>

Applicants argue that to remedy these legal errors, we should go farther in the first phase of these proceedings by (1) requiring that, to avoid the obligation to show cause, PacifiCorp issue an RFP that “solicit[s] the quantity and type of resources that will result in the incremental emission reductions needed to make continual progress”;<sup>10</sup> (2) requiring PacifiCorp, “after issuing the RFP, to report to the Commission by a date certain whether it has acquired new resources that will result in the incremental emission reductions needed to make continual progress,”<sup>11</sup> and (3) requiring PacifiCorp to “procure resources, and/or make changes to the operation of existing Oregon-allocated resources, that will result in the incremental emission reductions needed to make continual progress.”<sup>12</sup>

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<sup>6</sup> Application for Reconsideration at 2.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.* at 5.

<sup>9</sup> *Id.* at 8.

<sup>10</sup> *Id.* at 1.

<sup>11</sup> *Id.* at 1.

<sup>12</sup> *Id.*

In response, PacifiCorp and AWEC both challenge Applicants' assertion that we made a factual finding in docket LC 82 that PacifiCorp was failing to make continual progress. They highlight that docket LC 82 was not a contested case with an evidentiary record. As a result, they contend that any "quasi-evidentiary statements from docket LC 82"<sup>13</sup> are not "findings of fact" in the instant proceedings that the Commission was required to consider.<sup>14</sup> AWEC adds that "the Commission's legal conclusion [in the Phase I Order] was not, as Applicants allege, that 'PacifiCorp's lack of continual progress will be remedied by showing cause should it not issue an RFP \* \* \*,'" but rather "that [the Commission] had the legal authority to require PacifiCorp to issue an RFP and review the resulting bids."<sup>15</sup> AWEC observes that "[t]he requirement to show cause was a directive to PacifiCorp should it not issue an RFP" rather than a legal conclusion.<sup>16</sup>

PacifiCorp argues that Applicants' proposed remedies are "unconstitutional, outside the scope of docket UM 2345's Phase I, and would violate PacifiCorp's right to due process."<sup>17</sup> According to PacifiCorp, the only way to protect PacifiCorp's due process rights, should we determine that factual issues or the Applicants' remedies should be addressed, is to proceed to a second phase in these proceedings.

Finally, PacifiCorp states that the Applicants' remedies would add several months to the schedule on which PacifiCorp currently proposes to issue and execute an RFP, thus delaying its procurement of non-emitting resources.

## **2. *Commission Resolution***

Applicants' first argument, that the Phase I Order fails to articulate a rational connection between Order No. 24-297's purported finding of lack of continual progress in docket LC 82 and our subsequent decision to remedy that finding with a potential show cause, fails because, as Applicants recognize in a later section of their application,<sup>18</sup> the Phase I Order contains no conclusion—legal or otherwise—that the show-cause directive will remedy PacifiCorp's lack of continual progress. As noted, the scope of proceedings resulting in the Phase I Order was explicitly limited to determining the extent of the Commission's legal authority to impose various remedies. It would have been premature for us to take the additional step of actually imposing remedies prior to the development of a record.

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<sup>13</sup> PacifiCorp Reconsideration Response Brief at 3.

<sup>14</sup> *Id.*; AWEC Response to Application for Reconsideration at 4.

<sup>15</sup> AWEC Response to Application for Reconsideration at 5, *citing* Application for Reconsideration at 3.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> PacifiCorp Reconsideration Response Brief at 5.

<sup>18</sup> Application for Reconsideration at 6.

Having reached the threshold conclusion that this Commission has the requisite authority, we set out in the Phase I Order a process by which we will, if it becomes necessary, move to the next phase of this contested case proceeding to consider evidence and arguments to support a determination whether to direct PacifiCorp to make progress by issuing an RFP. Contrary to Applicants' arguments, the Phase I Order is consistent with and implements their demand that we are "legally required by ORS 469A.415(6) to provide whatever process the Commission deem[s] necessary to fulfill its statutory obligation to ensure that PacifiCorp demonstrates continual progress and is taking actions as soon as practicable that facilitate rapid reduction of greenhouse gas emissions at reasonable costs."<sup>19</sup> The show-cause process laid out in the Phase I Order is the means by which we will provide such process, if it becomes necessary to do so. Because PacifiCorp has initiated the procurement process by filing an RFP on its own initiative by June 1 of this year, the order (as amended above) does not require the Commission or stakeholders to devote their scarce resources to a show-cause proceeding at this time.

Applicants' second and third arguments are similarly flawed. As Applicants correctly point out, we have recognized that we are required to make certain that each electric company demonstrates continual progress and is taking actions as soon as practicable that facilitate rapid reduction of greenhouse gas emissions at reasonable costs. It does not follow, however, that we are required, in the first phase of these proceedings and prior to developing a record, to impose the specific requirements advocated by Applicants. The issuance of the Phase I Order was a necessary first step towards potentially exercising our authority to enforce HB 2021.

Finally, Applicants' concern that PacifiCorp's RFP may not be tailored to achieving HB 2021 compliance can be raised in the RFP process in docket UM 2383. That docket is the appropriate venue for us to consider whether modifications to PacifiCorp's draft RFP are needed. If we approve PacifiCorp's draft RFP in that docket, our approval may contain any conditions we deem necessary.<sup>20</sup>

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<sup>19</sup> Id. at 8.

<sup>20</sup> OAR 860-089-0250(5).

**V. ORDER**

IT IS ORDERED that the Phase I Order No. 25-098 is amended as set forth above and the application for reconsideration or rehearing of Sierra Club, Mobilizing Climate Action Together (MCAT), the Green Energy Institute at Lewis and Clark Law School (GEI), and Northwest Energy Coalition (NWECC) is denied.

Made, entered, and effective Jun 12 2025.



Letha Tawney  
Chair



Les Perkins  
Commissioner



Karin Power  
Commissioner

A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.