

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

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

Respondent.

DOCKET NO. UE-210829

**POST-HEARING BRIEF OF
NW ENERGY COALITION AND RENEWABLE NORTHWEST**

November 12, 2024

TABLE OF CONTENTS

| | |
|--|----|
| INTRODUCTION..... | 1 |
| BACKGROUND..... | 3 |
| I. Clean Energy Transformation Act..... | 3 |
| A. Interim Targets and Demonstrating Progress Toward CETA Mandates | 3 |
| B. CETA’s Energy Equity Mandates..... | 5 |
| II. PacifiCorp’s 2021 CEIP and 2023 Biennial CEIP Update | 7 |
| A. Interim Target Reductions..... | 7 |
| B. PacifiCorp’s Minimum Designations and DER Program Design..... | 11 |
| ARGUMENT | 12 |
| I. PacifiCorp’s Biennial CEIP Update Fails to Establish Interim Targets that Demonstrate Progress Towards CETA’s Mandates. | 14 |
| A. The UTC should hold PacifiCorp to the targets agreed to in the Revised 2021 CEIP..... | 14 |
| 1. The burden is on PacifiCorp to justify its artificial cost escalation of renewable resources; it has failed to do so. | 15 |
| 2. The relevance of the cancelled 2022AS RFP. | 19 |
| 3. The Oregon Public Utility Commission’s finding of no continual progress. | 24 |
| B. The Commission should order PacifiCorp to initiate a near-term resource procurement process by which it can demonstrate necessary progress ahead of the 2030 deadline | 26 |
| 1. Interim targets are the primary tool for demonstrating progress toward CETA compliance | 26 |
| 2. The Commission has broad discretion to fashion a remedy. | 29 |

| | | |
|-----|---|----|
| 3. | The appropriate remedy is an order directing PacifiCorp to pursue near-term procurement of CETA compliant resources through a new all-source RFP in early 2025..... | 32 |
| II. | PacifiCorp’s CEIP Should be Subject to Existing UTC Guidance on Energy Equity .. | 34 |
| A. | PacifiCorp should set minimum designations for each DER offering..... | 36 |
| B. | PacifiCorp’s DER programs should be broadened to better serve all low-income customers and named communities..... | 39 |
| | CONCLUSION | 40 |

INTRODUCTION

1. It is difficult to imagine a problem of greater magnitude or urgency than the climate crisis. The legislature understood this stark reality when it passed the Clean Energy Transformation Act (“CETA”), SB 5116, in 2019, finding that: “Washington must address the impacts of climate change by leading the transition to a clean energy economy.” RCW 19.405.010(1). Indeed, as the legislature warned, “[a]bsent significant and swift reductions in greenhouse gas emissions, climate change poses immediate significant threats to our economy, health, safety, and national security.” *Id.* at (3). Not only must this transition happen quickly, it must result in the “equitable distribution of energy benefits and reduction of burdens to vulnerable populations and highly impacted communities. . . .” *Id.* at (6).
2. As the legislature recognized in its adoption of CETA’s clean energy mandates, “utilities in the state have an important role to play in this transition, and must be fully powered, through regulatory tools and incentives, to achieve the goals of this policy.” *Id.* at (5). Accordingly, the Utilities and Transportation Commission (“UTC” or “Commission”) is charged with exercising its broad authority to ensure that utilities demonstrate progress toward achieving CETA’s mandates through their clean energy implementation plans (“CEIPs”). Interim targets established in CEIPs are essential tools to ensure utilities are on track to decarbonize consistent with CETA’s timeframes and the demands of climate science. In order to effect the transformation at the rate intended by the legislature, it is critical that CETA continue to be applied rigorously, objectively, and consistently across Washington’s regulated utilities, both to ensure the statute’s efficacy and to foster a predictable regulatory environment in which the Commission and the utilities it regulates can fulfill their respective roles to effect energy regulation and distribution “in the public interest.” RCW 80.1.040.

3. Against this backdrop, PacifiCorp has asked the Commission to—in effect—suspend CETA’s requirements based on its precarious financial circumstances and justified by ostensible but unsubstantiated supply-chain and pricing difficulties. Moreover, PacifiCorp made its request to reduce interim targets by almost half a mere week after it agreed to an intensively negotiated settlement on the terms of its 2021 CEIP. It is notable that the financial difficulties it cites, stemming from wildfire liability, are of a type that are attributable to the effects of climate change, and while of undeniable magnitude, cannot be expected to decrease in frequency or severity over the coming decades. In short, PacifiCorp has failed to demonstrate progress toward achieving CETA’s mandates, and CETA’s implementation cannot be indefinitely delayed based on such events, which are part of the ever-increasing reality of climate change. Moreover, as we have seen and continue to witness, it is the most vulnerable populations who are first and most severely impacted by climate change. CETA’s direction that energy equity must be included within the public interest is not an aspiration that should be lightly deferred.

4. For all of these reasons, Renewable Northwest and NW Energy Coalition (“RNW-NWEC”) respectfully request that the Commission follow its own recent precedent by holding PacifiCorp to the interim targets articulated in the negotiated and approved 2021 CEIP, and that, in furtherance of attaining these goals, it use its existing and broad discretion to order PacifiCorp to release an all-source request for proposals (“RFP”) to the market at the time of its 2025 IRP filing next spring, ideally following an accelerated schedule to allow for additional procurement ahead of CETA’s 2030 mandate. Moreover, RNW-NWEC request that the Commission ensure PacifiCorp’s CEIP furthers the public interest by including the

described minimum designations and planning processes on behalf of vulnerable, highly impacted, and named communities as contemplated by CETA.

5. Only five years after CETA’s passage, the urgency to address the impacts of climate change through the transition to a clean energy economy has never been more pronounced. Now is not a time for states, such as Washington—which have helped lead the clean energy transition—to rest on their efforts. Thus, RNW-NWEC urge the Commission to exercise its broad authority to implement CETA’s mandates by holding PacifiCorp to its commitments and keeping it on track to decarbonize by 2045.

BACKGROUND

I. Clean Energy Transformation Act

A. Interim Targets and Demonstrating Progress Toward CETA Mandates

6. CETA requires electric utilities to generate one hundred percent of their electricity from non-emitting and renewable resources by 2045. RCW 19.405.050(1). By 2030, all electric utilities must ensure that “all retail sales of electricity to Washington retail customers be greenhouse gas neutral.” RCW 19.405.040(1). CETA imposes a “mandate” on utilities that “requires all power sold to Washington consumers to be decarbonized by 2045.” *PacifiCorp v. Watson*, No. 3:23-CV-06155-TMC, 2024 WL 3415937, at *1 (W.D. Wash. July 15, 2024). “Utilities are expected to meet this timeline by investing in greater efficiency, renewable energy infrastructure, and other energy transformation projects.” *Id.* at * 2 (citing RCW 19.405.040(1)(a), (b)).
7. Leading up to the 2045 decarbonization deadline, “the burden of CETA compliance is not insignificant.” *Id.* CETA requires each investor-owned utility to develop a four-year CEIP. CEIPs must “be informed by both a utility’s clean energy action plan and its long-term

integrated resource plan.”¹ WAC 480-100-640(6). The four-year CEIP filing schedule outlined in CETA directs utilities to “demonstrate progress toward” CETA’s 2030 and 2045 clean energy mandates. RCW 19.405.060(1)(b)(iii). Progress is measured through compliance with interim targets from one CEIP filing to the next. More specifically, WAC 480-100-640(1) directs that the content of a utility’s CEIP be shaped around this forward momentum: “[t]he CEIP describes the utility’s plan for *making progress toward* meeting the clean energy transformation standards and is informed by the utility’s clean energy action plan” (emphasis added). WAC 480-100-640(2) addresses the purpose of the interim targets, which is to “[d]emonstrate how the utility will make reasonable progress toward meeting the standards identified in WAC 480-100-610(2) and (3). . . .” Importantly, “[e]ach CEIP must include the *specific actions* the utility will take over the implementation period” in tabular and in narrative form. WAC 480-100-640(5), (6) (emphasis added). Utilities must file a biennial CEIP update in each odd-numbered year in which a CEIP is not filed. WAC 480-100-640(11). The biennial CEIP update must “include an explanation of how the update will modify targets in its CEIP.” *Id.*

8. The Commission has the authority to approve, reject, or approve with conditions a utility’s CEIP or biennial CEIP update. WAC 480-100-645(2). The Commission may “require more stringent targets than those the utility proposes” and “adjust or expedite interim and specific target timelines.” *Id.*

¹ *In re Puget Sound Energy CEIP*, Docket UE-210795, Order 12, ¶ 1 (March 25, 2024), citing *In re Adopting Rules Relating to Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act and Amending or Adopting rules relating to WAC 480-100-238, Relating to Integrated Resource Planning*, Dockets UE-191023 & UE-109698 (Consolidated), General Order 601, p. 24, ¶ 59 (Dec. 28, 2020) (General Order R-601).

B. CETA's Energy Equity Mandates

9. CETA requires that electric utilities “ensure that all customers are benefiting from the transition to clean energy: Through the equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and highly impacted communities...” RCW 19.405.040(8); WAC 480.100.610(4)(c)(i). “Vulnerable populations” are “communities that experience a disproportionate cumulative risk from environmental burdens due to . . . adverse socioeconomic factors . . . and [other] sensitivity factors.” WAC 480-100-605. “Energy burden” refers to “the share of annual household income used to pay annual home energy bills.” *Id.* “Equitable distribution” is defined as “a fair and just, but not necessarily equal, allocation of benefits and burdens from the utility’s transition to clean energy. Equitable distribution is based on disparities in current conditions. Current conditions are informed by, among other things, the assessment described in RCW 19.280.030(1)(k) from the most recent integrated resource plan.” *Id.* A “highly impacted community” (“HIC”) is “a community designated by the department of health based on the cumulative impact analysis required by RCW 19.405.140 or a community located in census tracts that are fully or partially on ‘Indian country,’ as defined in 18 U.S.C. Sec. 1151.” *Id.*

10. The Commission has provided guidance on achieving energy equity and has tasked all utilities with applying equity to every consideration:

So that the Commission’s decisions do not continue to contribute to ongoing systemic harms, we must apply an equity lens in all public interest considerations going forward. Recognizing that no action is equity-neutral, regulated companies should inquire whether each proposed modification to their rates, practices, or operations corrects or perpetuates inequities. Companies likewise should be prepared to provide testimony and evidence to support their position. Meeting this expectation will require a comprehensive understanding of the ways in which systemic racism and other inequities are self-perpetuating in the existing regulatory framework absent corrective intervention. It is incumbent upon

regulated companies to educate themselves on topics related to equity just as it is incumbent upon the Commission to do the same.²

11. The Commission has also provided guidance on the fair distribution of the energy system's benefits and burdens in the context of its implementation of CETA and its review and approval of clean energy implementation plans. In Docket UE-210795 related to Puget Sound Energy's ("PSE") 2021 Clean Energy Implementation Plan, the Commission directed PSE to comply with two key conditions related to minimum designations and distributed energy resources ("DER"). First regarding minimum designations, the Commission required the following:

CONDITION 20. Minimum Designations. PSE will file with the Commission an amendment to this CEIP to designate for Named Communities a minimum of 30% of the energy benefits of its DER solar, DER storage, DR, and EE programs, with benefits measured across each tranche of resources. PSE will commit to developing a targeting approach to identify the customers and communities with deepest need within the broader category of Named Communities in consultation with interested persons and advisory groups. By the 2023 Biennial CEIP Update, PSE will designate a minimum percentage of energy benefits that will flow to Named Communities with deepest need.³

Second, regarding DER program design, the Commission imposed the following condition:

CONDITION 21. DER Program Design. To implement the 30% energy benefit minimum designations for Named Communities discussed above, PSE will develop mechanisms for intentionally serving customers in Named Communities in each of its individual DER programs, including carve-outs for program costs (including outreach/education) and minimum participation thresholds. PSE will also modify its program design for solar and storage DER programs to better ensure benefits flow to Named Communities, including by developing targeting for Named Communities beyond using income as the sole criterion for program eligibility; offering higher incentives for low-income customers and Named Communities; ensuring benefits flow to tenants in affordable multifamily

² *WUTC v. Cascade Natural Gas Corp.*, Docket UG-210755, Order 09, ¶ 58 (August 23, 2022).

³ *In re Puget Sound Energy CEIP*, Docket UE-210795, Order 08, ¶ 278 (June 6, 2023).

housing; and targeting storage programs to Vulnerable Populations where increased reliability would reduce vulnerabilities.⁴

II. PacifiCorp’s 2021 CEIP and 2023 Biennial CEIP Update

A. Interim Target Reductions

12. PacifiCorp filed its final 2021 CEIP with the Commission on December 30, 2021.⁵ The Company filed a revised 2021 CEIP with the Commission on March 13, 2023 (“Revised 2021 CEIP”).⁶ After a long settlement process which included upward adjustments to the original interim targets, the Commission approved the Revised 2021 CEIP on October 25, 2023, thereby approving the interim target of 60 percent renewable and non-emitting by 2025.⁷ Just one week after the Commission’s approval of the Revised 2021 CEIP, on November 1, 2023, PacifiCorp filed its 2023 Biennial CEIP Update, proposing interim targets reduced by nearly half, resulting in a 2025 interim target of 33 percent renewable and non-emitting.⁸ The Commission set this matter for adjudication because PacifiCorp’s 2023 Biennial CEIP Update “does not at this time show meaningful progress towards meeting CETA standards.”⁹
13. Given the clear direction CETA provides that utilities must “demonstrate progress toward” the clean energy mandates of RCW 19.405.040(1) and 19.405.050(1), PacifiCorp’s

⁴ *Id.*

⁵ *WUTC v. PacifiCorp*, Docket UE-210829, Order 06, ¶ 5 (Oct. 25, 2023).

⁶ *Id.* at ¶ 12.

⁷ *Id.* at ¶¶ 43-45; *see also WUTC v. PacifiCorp*, Docket UE-210829, Appendix A to Order 06, *Full Multi-Party Settlement Agreement* (Oct. 25, 2023).

⁸ Exh. PAC-1, Docket UE-210829, 2023 Clean Energy Implementation Plan Biennial Report at 6 (Nov. 1, 2023).

⁹ *WUTC v. PacifiCorp*, Docket UE-210829, Order 09, *Order Suspending Biennial CEIP Update; Setting Matter for Adjudication*, ¶ 28 (March 25, 2024).

proposed interim target reductions are naturally the focus of this docket. However, it is important to consider the full breadth of the Company’s CEIP, including the “specific actions” supporting the utility’s targets, and to contextualize PacifiCorp’s target reductions by looking closely at the portfolio modeling for the Company’s 2023 Integrated Resource Plan (“2023 IRP”), which informed the 2023 Biennial CEIP Update.¹⁰

14. PacifiCorp’s Commission-approved interim targets were supported by “specific actions” including the 2020 and 2022 All-Source Requests for Proposals (“2020AS RFP” and “2022AS RFP,” respectively).¹¹ The Revised 2021 CEIP anticipated that the 2022AS RFP would result in “least-cost, least-risk supply-side resources” that were “renewable resources which can reach commercial operations by the end of 2025 and therefore will contribute to PacifiCorp’s renewable energy and greenhouse gas emission goals.”¹² The 2022AS RFP was issued April 29, 2022, with the objective of identifying 1,345 megawatts (“MW”) of new supply-side renewable resources and 600 MW of collocated storage resources with commercial operation dates by year-end 2026.¹³ Benchmark bids were due December 9, 2022, and market bids were due March 14, 2023.¹⁴

¹⁰ PacifiCorp’s 2023 IRP, which also serves as the Company’s 2021 IRP Two-Year Progress Report in Washington, was filed in Docket UE-200420.

¹¹ *See*, PacifiCorp 2021 CEIP (Refile), Docket 210829 at 66-73 (March 13, 2023).

¹² *Id.* at 68-69.

¹³ Docket UE-210979, Final 2022 All Source Request for Proposals at 1 (filed May 13, 2022).

¹⁴ Docket UE-210979. *See*, Docket UE-210979—Update to PacifiCorp’s 2022 All Source Request for Proposals Schedule (Sept. 18, 2023), which notified the Commission of the Company’s updated RFP schedule, which differed from what was originally filed in docket UE-210979. The updated schedule can be found on PacifiCorp’s website at: https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/suppliers/rfps/pacifi-corps-2022-all-source-request-for-proposals/PacifiCorp_2022AS_RFP_Main_Document.pdf.

15. PacifiCorp announced at its February 23, 2023, public input meeting that it would not be able to provide any insight into the 2023 IRP results until the official filing date of the final IRP. PacifiCorp also discussed its request to state commissions that an extended public comment period be permitted before the initiation of the IRP acknowledgment processes.¹⁵ PacifiCorp filed its 2023 IRP on March 31, 2023, with an amended version filed May 31, 2023 (the “2021 IRP Progress Report”).¹⁶ The original March IRP filing was the first opportunity for stakeholders to see PacifiCorp’s portfolio modeling results.¹⁷ The extended 30-day public comment period was initiated April 1, 2023, and ended April 30, 2023.¹⁸ Typically, stakeholders have the months between a draft IRP filing and the final IRP filing to analyze a utility’s modeling results and provide constructive feedback.¹⁹ But PacifiCorp’s 2023 IRP process was so constrained that stakeholders were left with 10 business days — from the release of the public data disks to the conclusion of the extended comment period — to analyze the data informing the 2023 IRP and submit comments to the Company.²⁰

¹⁵ February 23, 2023, IRP Public-Input Meeting, *available at* <https://youtu.be/PPqOdaFke9c>.

¹⁶ Docket UE-200420, PacifiCorp’s Amended 2023 Integrated Resource Plan, Cover Letter (May 31, 2023).

¹⁷ *See*, Exh. RG-25X, PacifiCorp Stakeholder Feedback Form, 2023 IRP, WUTC Staff Comments (Jan. 17, 2023).

¹⁸ The schedule for the extended comment period was discussed during PacifiCorp’s April 13, 2023, IRP Public Input Meeting, when it was also announced that the Company’s public data disks supplement would be provided the next day, April 14, 2023. *See*, Exh. RG-26X, PacifiCorp 2023 IRP PIM 04.13.23 slides. The meeting recording is available at: <https://www.youtube.com/watch?v=gPqQSJyO-DE>.

¹⁹ WAC 480-100-625(3) requires a draft IRP be filed no later than four months prior to the due date of the final IRP. It also requires the draft IRP to include the preferred portfolio and supporting analysis.

²⁰ Exh. RG-26X, 2023 IRP Public Input Meeting Slides at 4 (“2023 IRP Filing Status”) (April 13, 2023); Ghosh, Tr. 306:21 – 307:3.

16. PacifiCorp’s cost assumptions for the 2023 IRP and the 2021 IRP Two-Year Progress Report were developed by WSP, an engineering and professional services firm, and were primarily informed by the National Renewable Energy Laboratory’s (“NREL”) Annual Technology Baseline (“ATB”).²¹ However, the Company made manual adjustments to NREL’s ATB based on its own 2022 market observations, claiming these cost assumptions included direct costs not captured in other sources.²² On September 29, 2023, PacifiCorp suspended the 2022AS RFP, citing “key drivers” behind the decision, including rulemakings by the federal Environmental Protection Agency and increasing wildfire and extreme weather risks.²³ The 2022AS RFP was later cancelled.²⁴
17. On October 25, 2023, RNW submitted comments in the Oregon Public Utility Commission’s (“OPUC”) docket LC 82 outlining concerns with PacifiCorp’s 2023 IRP including the Company’s manual escalation of renewable resource costs.²⁵ PacifiCorp’s cost assumptions in its 2023 IRP for wind, solar, and battery technologies were 15 to 50 percent

²¹ Docket UE-200420. PacifiCorp’s 2023 IRP Vol. II, Appendix M (May 31, 2023), *available at* https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/energy/integrated-resource-plan/2023-irp/2023_IRP_Volume_II_Final_5-31-23.pdf.

²² Ghosh, Tr. 254:25 – 255:1-25.

²³ Update to PacifiCorp’s 2022 All Source Request for Proposals Schedule, Docket UE-210979 (Sept. 29, 2023).

²⁴ Exh. MDM-10X, Notice of Cancellation of PacifiCorp’s 2022 All-Source Request for Proposal, Docket UE-210979 (April 3, 2024).

²⁵ Ware, Exh. KW-1THC at 6:19 – 7:2. Ms. Ware’s testimony and this brief repeatedly reference LC 82, the OPUC’s docket for review of PacifiCorp’s 2023 IRP, largely because of the robust engagement with the 2023 IRP that occurred in that docket. In Oregon, the IRP (and HB 2021 Clean Energy Plan, which is closely tied in substance and time to the IRP, ORS 469A.415) is the focal point of the OPUC’s review of utility resource planning; by contrast, the Utilities and Transportation Commission focuses on CEIPs because of their characterization in CETA, *see, e.g.*, Utilities and Transportation Commission, Notice of Change to Electric Integrated Resource Plan Process (July 25, 2023).

higher than the 2023 IRP cost assumptions for Portland General Electric and the California Public Utilities Commission through the early 2030s.²⁶ One result of the OPUC’s consideration of PacifiCorp’s 2023 IRP was the decision not to acknowledge the Company’s preferred portfolio.²⁷ Specific to the escalation of renewable resource costs, the OPUC staff observed that “[c]ompared to other studies that have adjusted for the recent market changes in renewable energy, PacifiCorp’s adjustments have overstated the effects of inflation.”²⁸ OPUC Staff also observed that:

PacifiCorp had other resource options available to it in 2023 and 2024 when it chose to pursue its current de facto strategy of increased reliance on coal power, higher levels of market purchases, and bilateral storage contracts. The 2022 AS RFP Initial Shortlist contained [REDACTED CONFIDENTIAL INFORMATION]. Yet, the Company chose to take resource actions that increase reliance on market purchases, bilaterally contract for storage at unknown prices, build more gas plants, increase reliance on coal plants and speculative CCUS technology all while falling short of emissions reduction targets.²⁹

B. PacifiCorp’s Minimum Designations and DER Program Design

18. PacifiCorp’s Revised 2021 CEIP states that 27.1 percent of its total Washington customer base resides in Highly Impacted Communities (“HICs”).³⁰ In its Revised 2021 CEIP, the Company also shows the proportion of vulnerable populations in its service area for 22 different identified vulnerable populations. These proportions range from 0.6 to 46.2

²⁶ *Id.*; see also, Ware, Exh. KW-3 (Renewable Northwest workpapers).

²⁷ Simmons, Exh. JNS-18, *In re PacifiCorp, dba Pacific Power 2023 Integrated Resource Plan*, OPUC Docket LC-82, Order 24-073 at 7 (March 19, 2024).

²⁸ *Id.*, Appendix A at 51.

²⁹ Exh. RG-30X, Public Utility Commission Redacted Staff Report, LC 82, at 10-11 (August 1, 2024).

³⁰ PacifiCorp 2021 CEIP (Refile), Docket 210829 at 31 (March 13, 2023).

percent.³¹ The Company's Revised 2021 CEIP also stages progress towards CETA's DER goals, and includes an overview of energy efficiency, demand response, and renewable energy programs and plans. Targets for its 4-year compliance period include: energy efficiency (212,431 MWh),³² demand response (37.4 MW),³³ and renewable energy (6,601,088 MWh).³⁴ In its 2023 Biennial CEIP Update, the Company updated these targets to: energy efficiency (187,115 MWh, reduced by 25,316 MWh from the Revised 2021 CEIP),³⁵ demand response (37.4 MW, which is unchanged from the Revised 2021 CEIP),³⁶ and renewable energy (4,739,291 MWh, reduced by 1,861,797 MWh from the Revised 2021 CEIP).³⁷

ARGUMENT

19. PacifiCorp has the burden of showing compliance with CETA and that its Revised 2021 CEIP and 2023 Biennial CEIP Update demonstrate that it is making meaningful progress towards compliance with the CETA mandates. RCW 19.405.060(1); WAC 480-100-640(11).³⁸ With regard to the setting of interim clean energy targets, the history of PacifiCorp's CEIP and the related filings reveals a lack of transparency throughout the Company's planning processes and a disjointed effort to control the narrative surrounding its questionable actions. For reasons discussed below, RNW-NWEC are concerned that

³¹ *Id.* at 33-34, Table 2.2.

³² *Id.* at 22, Table 1.5.

³³ *Id.* at 22.

³⁴ *Id.* at 12, Table 1.1.

³⁵ Exh. PAC-1 at 13, Table 1.3.

³⁶ *Id.* at 13.

³⁷ *Id.* at 9, Table 1.2.

³⁸ *WUTC v. PacifiCorp*, Docket UE-210829, Order 09, ¶ 30 (March 25, 2024).

PacifiCorp’s manipulation of the modeling informing the 2023 Biennial CEIP Update, and the termination of the 2022AS RFP, may have been efforts to delay the procurement timeline to allow the Company’s own projects to better compete. As Commissioner Rendahl observed during the evidentiary hearing, PacifiCorp’s position results in the “risk of disallowance if the company continues not to complete RFPs, does not purchase resources in a timely manner, and then has to buy resources at a significant cost to meet the 2030 standard.”³⁹ Consistent with these concerns, RNW-NWEC recommend that the Commission redirect PacifiCorp toward a path to compliance by 1) upholding the Commission-approved interim targets from the Revised 2021 CEIP and 2) ordering the Company to launch an RFP in conjunction with the Spring filing of the 2025 IRP. Both of these measures are well within the Commission’s authority and are warranted under the circumstances.⁴⁰

20. In addition, RNW-NWEC urge the Commission to require PacifiCorp to be held to conditions in line with Conditions 20 and 21 from Order 08 of PSE’s 2021 CEIP to establish and help implement minimum designations of energy benefits to PacifiCorp’s named communities as detailed in the testimony of Witness Thompson.⁴¹

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³⁹ Comm’r Rendahl, Tr. 229:13-17.

⁴⁰ Counsel for PacifiCorp mischaracterizes RNW-NWEC’s position in this docket as requesting the Commission to order the Company to procure resources. *See*, Rogala, Tr. 342:16-19. Rather, as set forth herein, and in Ms. Ware’s pre-filed testimony, RNW-NWEC request the Commission to order the Company to release an all-source RFP to the market no later than the anticipated April 2025 filing of PacifiCorp’s 2025 IRP, and that the RFP follow an accelerated schedule to allow for the possibility of a second procurement designed to bring on resources ahead of the 2030 mandate. Ware, Exh. KW-1THC at 22:14-19.

⁴¹ Thompson, Exh. CT-IT at 16:3-23.

I. PacifiCorp’s Biennial CEIP Update Fails to Establish Interim Targets that Demonstrate Progress Towards CETA’s Mandates.

21. The subject of the current proceeding centers on PacifiCorp’s backsliding in its obligation to meet CETA’s core requirement that utilities “demonstrate progress toward” the clean energy mandates of RCW 19.405.040(1) and 19.405.050(1). RCW 19.405.060(1)(b)(iii). Despite extensive proceedings on PacifiCorp’s 2021 CEIP, resulting in a joint settlement agreement with 50 conditions on October 25, 2023, the Company filed its 2023 Biennial CEIP Update in this docket on November 1, 2023, which contained drastic reductions to the interim targets it had agreed to only a week earlier.⁴² These reductions constitute approximately half of the interim targets established through the lengthy settlement process following the Revised 2021 CEIP and result in only a two percent increase to PacifiCorp’s interim target over the entirety of the first four-year compliance period, functionally delaying all meaningful progress until late in the next compliance period (2026-2029).

A. The UTC should hold PacifiCorp to the targets agreed to in the Revised 2021 CEIP.

22. When faced with a recent, if less egregious, case of backsliding by PSE, the Commission rejected the utility’s modified interim targets, instead holding the company to its original 2021 CEIP targets, noting UTC Staff’s concerns that “the risk of stalled progress towards the 2030 CETA standard [outweighs] the risk that PSE may come up short of its original 2025 interim target.”⁴³ Moreover, just last week, the Commission reiterated its position by denying PSE’s petition to lower its interim targets for years 2024 and 2025, noting

⁴² Compare Revised 2021 CEIP at 12, Table 1.1 with Exh. PAC-1, PacifiCorp CEIP Biennial Report at 6, Table 1.1, and 8-9, Table 1.2, Docket UE-210829.

⁴³ *In re Puget Sound Energy CEIP*, Docket UE-210795, Order 12, ¶ 11 (March 25, 2024).

that “keeping the [original interim] targets in place provides incentive to PSE and others to make reasonable progress towards achieving CETA targets.”⁴⁴ So too here. For the sake of consistency and continued progress toward CETA’s requirements, the Commission should hold PacifiCorp to the same standard because precisely the same risk applies here—though arguably to an even greater extent—of stalled progress toward CETA’s targets. As explained below, PacifiCorp has not demonstrated a compelling reason why the Commission should treat it differently from PSE.

1. The burden is on PacifiCorp to justify its artificial cost escalation of renewable resources; it has failed to do so.

23. PacifiCorp’s requested interim target reductions are not only problematic because of their magnitude and the extent to which they will make it more difficult for the Company to achieve CETA’s benchmarks—they are also predicated on questionable and unsupported modeling. Specifically, as explained in the Response Testimony of Katie Ware, PacifiCorp’s assumption of renewable resource costs is substantially higher than those found in any data source for comparable utilities.⁴⁵

24. The cost assumptions PacifiCorp used in both its 2023 IRP and 2021 IRP Two-Year Progress Report underpin the cost assumptions at issue in the 2023 Biennial CEIP Update interim target reductions. As explained in Ms. Ware’s testimony, those cost assumptions were developed by WSP and were informed by the NREL ATB. At issue is not these data sources or the cost estimations made by WSP, but PacifiCorp’s unsupported manual manipulation of

⁴⁴ *In re Puget Sound Energy CEIP*, Docket UE-210795, Order 14, ¶ 10 (Nov. 8, 2024).

⁴⁵ Ware, Exh. KW-1THC at 6:19 – 7:2; Ware, Exh. KW-3 (Renewable Northwest workpapers).

those model outputs to reach an outcome-determinative reduction in its revised interim targets. According to the Company, its engineering of the cost assumptions was done in order to include direct costs not adequately represented in other sources and was based on the Company's own 2022 market observations.⁴⁶

25. PacifiCorp has explained that these market observations reflect regulatory and supply chain issues and related pricing impacts “that occurred during the latest procurement process.”⁴⁷ That, however, is in large part the extent of PacifiCorp's explanation for its manual cost escalation for renewable resources. Given that the renewables costs cited by PacifiCorp as justification for its lowered interim targets are higher than *all other sources, even those including construction financing costs*, some more robust explanation is required. Underpinning this dissonance is Lazard's 2023 Levelized Cost of Energy+ (“LCOE+”), discussed in Ms. Ware's testimony.⁴⁸ The LCOE+ is an important tool in the context of this inquiry into PacifiCorp's pricing manipulations because it allows for comparison in the cost of generating electricity from renewable energy to conventional thermal resources across differing scenarios, thereby allowing for an “apples-to-apples” comparison of different energy generation technologies by accounting for variables including generation/output, capital and fuel costs, operating and maintenance expenses, and depreciation.⁴⁹ As noted in Ms. Ware's testimony, the 2023 LCOE+ reports total capital costs 32 percent below the outputs PacifiCorp reached through application of its manual escalators for solar PV and 25 percent

⁴⁶ Ghosh, Tr. 254:25 – 255:1-25.

⁴⁷ Exh. PAC-1, 2023 CEIP Biennial Report at 7.

⁴⁸ Ware, Exh. KW-1THC at 7:13-16; Ware, Exh. KW-3; Ware, Exh. KW-5.

⁴⁹ Ware, Exh. KW-5.

lower for both terrestrial and offshore wind.⁵⁰ PacifiCorp has not explained these significant pricing discrepancies in either its testimony or during the evidentiary hearing for this docket. The burden is unquestionably on PacifiCorp to demonstrate the veracity of the numbers it used, and to explain how and why they should support lower interim targets. As explained below, the Company has failed to meet this burden.

26. No publicly available data sources support PacifiCorp's renewable cost escalations, and the Company has provided nothing in support of these figures aside from the repeated assertion that the escalators reflect its own internal market data. More is needed for the Commission to accept this reasoning as an explanation—let alone a justification—for the drastic reductions in PacifiCorp's interim targets between the Revised 2021 CEIP and the 2023 Biennial Update.

27. PacifiCorp did not remedy these shortcomings during the November 2024 evidentiary hearing. In response to questioning by UTC staff, Dr. Ghosh confirmed that the 2021 IRP—and specifically the modeling—formed the basis for the interim targets in the approved Revised 2021 CEIP.⁵¹ Importantly, Dr. Ghosh confirmed that while the 2021 IRP numbers were based on the same or similar data sources to those of the 2023 Biennial CEIP Update (i.e., then-current NREL numbers, as is industry practice), no manual adjustments were made to renewables costs in the Company's 2021 IRP, and indeed no such cost-escalators were used until the 2023 IRP, which directly informed the 2023 Biennial CEIP Update.⁵² According to Dr. Ghosh, the cost escalators were calculated by averaging the difference for a given

⁵⁰ Ware, Exh. KW-1THC at 7:11 – 8:2; Ware, Exh. KW-5.

⁵¹ Ghosh, Tr. 252:23 – 253:9.

⁵² Ghosh, Tr. 255:10-13.

technology type between the bids from the 2020AS RFP, and a purported repricing that took place on the part of developers in 2022.⁵³ Dr. Ghosh confirmed this “repricing” of 2020AS RFP bids was the sole source of the cost escalators, and that no subsequent IRP or other updated modeling process informed them.⁵⁴ Dr. Ghosh asserted that based on this “latest market information” the Company felt it was unable to procure resources at current NREL prices, but acknowledged that “it’s hard to verify that information. This is based on highly proprietary information. I, myself don’t actually even see these kinds of bids when they come in our company. And so *it’s just a representation of what we believed* was the actual market conditions that would have impacted near-term procurement.”⁵⁵ It is worth noting, the OPUC’s characterization of the 2020AS RFP bid repricing was that “there was no clear way to differentiate price change caused by interconnection costs from other types of price increases,” thereby calling into question the true nature of the price adjustments.⁵⁶

28. Tellingly, Dr. Ghosh conceded that the Company “received a lot of feedback” on its unsupported use of cost adders for renewables and will not be “including any renewable resource escalators or inflations to the price in the 2025 cycle.”⁵⁷ PacifiCorp is thus asking the Commission to give it a pass on CETA compliance based on “highly proprietary information”

⁵³ Ghosh, Tr. 255:15-25.

⁵⁴ Ghosh, Tr. 270:13-21.

⁵⁵ Ghosh Tr. 271:1-18 (emphasis added).

⁵⁶ *In re PacifiCorp, dba Pacific Power, 2020AS Request for Proposals (RFP)*, Docket OPUC UM 2059, OPUC Comments on the Independent Evaluator’s Closing and Sensitivities Reports and PacifiCorp’s Updated Request for Acknowledgment of its 2020AS RFP Final Shortlist at 20 (Aug. 19, 2021), available at <https://edocs.puc.state.or.us/efdocs/HAC/um2059hac152120.pdf>.

⁵⁷ Ghosh, Tr. 271:19-25.

that *it believed* represented the actual market conditions; a manual cost escalator it has not employed before or since. This despite the fact that the information in question is nowhere substantiated by the publicly available (and industry standard) data sources. Further, the Company's decision to abandon its questionable tactics on renewables pricing going forward can be seen as a concession that its manipulation of the modeling here resulted in inflated costs which are not, in fact, based in reality.

2. The relevance of the cancelled 2022AS RFP.

29. As discussed above, PacifiCorp's Commission-approved 2021 interim targets were supported by two specific actions (as required by RCW 19.406.060(1)(b)(iii)). These were the 2020AS RFP and 2022AS RFP. The importance of the 2022AS RFP in particular was the intention that it would result in "least-cost, least-risk supply side resources"; namely "renewable resources which can reach commercial operations by the end of 2025 and therefore will contribute to PacifiCorp's renewable energy and greenhouse gas emission goals."⁵⁸ Its intended purpose was to identify 1,345 MW of new supply-side renewable resources and 600 MW of collocated storage resources which would be in operation by the end of 2026.⁵⁹

⁵⁸ PacifiCorp 2021 CEIP (Refile), Docket 210829 at 68-69.

⁵⁹ Docket UE-210979, Final 2022 All Source Request for Proposals (filed May 13, 2022); *See*, Docket UE-210979—Update to PacifiCorp's 2022 All Source Request for Proposals Schedule (Sept. 18, 2023), which notified the Commission of the Company's updated RFP schedule, which differed from what was originally filed in docket UE-210979. The updated 2022AS RFP can be found on PacifiCorp's website at:

https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/suppliers/rfps/pacifi-corps-2022-all-source-request-for-proposals/PacifiCorp_2022AS_RFP_Main_Document.pdf.

30. At the time, the 2022AS RFP was the fulcrum of PacifiCorp’s compliance with the 60 percent renewable energy target approved by the Commission in the Revised 2021 CEIP. Indeed, in testimony supporting the approved Revised 2021 CEIP, PacifiCorp referred to the 2022AS RFP as “the bedrock of the Company’s supply-side procurement actions for the Revised CEIP.”⁶⁰ A mere week later, however, citing “key drivers” including EPA rulemaking and increasing wildfire and weather-related risks, PacifiCorp suspended the 2022AS RFP on September 29, 2023.⁶¹ Its ultimate cancellation⁶² eliminated any possibility of renewable resource acquisition by 2025 and put a serious strain on the Company’s ability to meet the approved Revised 2021 CEIP targets.

31. This reality directly contradicts Mr. McVee’s testimony that cancellation of the 2022AS RFP is not a “relevant concern for the current period” of the 2023 Biennial CEIP Update.⁶³ Indeed, throughout the current proceeding, PacifiCorp has disputed the relevance of the 2022AS RFP to the Biennial Update. This *post hoc* characterization is clearly at odds with the 2022AS RFP’s role as a “specific action” undertaken to support the Revised 2021 CEIP’s interim targets and the temporal overlap of this RFP with the development of PacifiCorp’s 2023 IRP. In recognition of this fact, RNW sought information relating to the 2022AS RFP

⁶⁰ Joint Settlement Testimony of PacifiCorp, Commission Staff, NW Energy Coalition, Sierra Club, and The Energy Project, Docket UE-210829. Exh. JS-1T at 8:13-16 (Sept. 2023), available at: <https://apiproxy.utc.wa.gov/cases/GetDocument?docID=594&year=2021&docketNumber=210829>.

⁶¹ Update to PacifiCorp’s 2022 All Source Request for Proposals Schedule, Docket UE-210979 (Sept. 29, 2023).

⁶² Exh. MDM-10X.

⁶³ McVee, Exh. MDM-1T at 23:20-22.

through data requests, in the hope of better understanding the renewable cost data PacifiCorp ostensibly used in the development of the renewable cost escalators.

32. PacifiCorp declined to disclose this information, with the result that the only window into this cost data is via OPUC docket LC 82 in which OPUC Staff noted that “PacifiCorp had other resource options available to it in 2023 and 2024 when it chose to pursue its current de facto strategy of increased reliance on coal power, higher levels of market purchases, and bilateral storage contracts.”⁶⁴ While PacifiCorp has objected to the relevance of this staff report, RNW-NWEC maintain that any document illustrating the importance of the 2022AS RFP as a “specific action” on which the 2021 CEIP interim targets were dependent is *de facto* relevant. Even without this window into the resources the 2022AS RFP made available, however, it is a clearly established fact in this docket that PacifiCorp received bids from the 2022AS RFP representing “a wide range of generation and energy storage offerings, with a range of commercial operation dates extending to 2028.”⁶⁵ If any of these bids were in fact cost-competitive, the question of disallowance raised by Commissioner Rendahl becomes more than a hypothetical. At this point the Commission has nothing more than PacifiCorp’s assertions that “there’s more at risk now than later,”⁶⁶ a statement palpably unsupported by the ever-increasing risk to utilities of wildfires and other climate-induced natural disasters.

33. Thus, without the bids and projects that would have resulted from the 2022AS RFP, PacifiCorp was hard put to meet the interim targets articulated in the approved Revised 2021 CEIP. It is worth noting, moreover, that the suspension of the 2022AS RFP preceded the

⁶⁴ Exh. RG-30X at 10.

⁶⁵ Exh. RG-19X at 2.

⁶⁶ McVee, Tr. 229:12-25; 230:16-23.

approval of PacifiCorp’s Revised 2021 CEIP by little more than a month. Of equal importance, the 2022AS RFP presumably resulted in more up-to-date bid information than the repriced 2020AS RFP bids. Based on OPUC Staff’s oblique references to redacted filings described above, it appears that bids received through the 2022AS RFP may well have been competitive relative to the resources assessed in PacifiCorp’s 2023 IRP.⁶⁷ And this makes basic sense: Dr. Ghosh testified that the renewable cost adders PacifiCorp applied to proxy resources in the 2023 IRP were based on an *average* of bid costs received in the 2020AS RFP.⁶⁸ But average bids don’t win RFPs; low bids do. Accordingly, the cost adders overstated the actual costs PacifiCorp would likely have incurred had its plan led it to go to market for more clean resources. Moreover, PacifiCorp has presented no concrete evidence that 2022AS RFP bids were not actually competitive, and as a result the Commission is left to speculate as to why the 2022AS RFP could not have served as the basis for updated—and more accurate—cost information concerning renewable resources, and indeed why it was not carried forward, as planned, to help the Company meet its approved Revised 2021 CEIP interim targets.

34. PacifiCorp lodged objections to exhibits that originated after the November 1, 2023, Biennial CEIP Update filing, arguing that they are irrelevant to these proceedings.⁶⁹ In particular PacifiCorp has focused on OPUC docket entries introduced as exhibits by RNW-NWEC. As already discussed, the OPUC Staff Report from Docket LC 82 is relevant because

⁶⁷ Exh. RG-30X, Public Utility Commission Redacted Staff Report, LC 82, at 10-11 (August 1, 2024).

⁶⁸ Ghosh, Tr. 255:18-25.

⁶⁹ See, e.g., Rogala, Tr. 114:19-23.

of its insight into the results of the 2022AS RFP. Also relevant are PacifiCorp’s 2022AS RFP benchmark bids which similarly provide insight into the cancelled 2022AS RFP process,⁷⁰ which PacifiCorp has consistently attempted to downplay the importance of. RNW-NWEC asserts that the window these exhibits provide into importance of the 2022AS RFP process is evidence of their relevance. It is worth noting, however, that PacifiCorp’s argument, which turns on the fact that these documents were generated after submission of the 2023 Biennial CEIP Update, is further undercut by its own reliance on a Commission Order *also* filed well after the 2023 Biennial CEIP Update to inform thermal resource assumptions in the 2023 IRP.⁷¹

35. PacifiCorp attributes cancellation of the 2022AS RFP to the following: EPA rulemaking with respect to greenhouse gases, EPA’s disapproval of Utah’s state ozone plan, wildfire risk and associated liability within PacifiCorp’s service area, and evolving extreme weather risks.⁷² It appears that these latter climate-driven risks—not discussed in detail in the 2023 Biennial CEIP Update—may in fact be a driving force behind not only the cancellation of the 2022AS RFP, but the reduced interim targets *in toto*.

36. In testimony, both of PacifiCorp’s witnesses referenced the Company’s precarious financial situation, due in part to wildfire-associated liability. Mr. McVee explained that the Company is having to “manage our cash on a day-to-day basis right now. And so then we

⁷⁰ Exh. RG-28X (PacifiCorp’s 2022AS RFP Benchmark Bids filed in OPUC Docket UM 2193).

⁷¹ Exh. MDM-15X, relying on Exh. RG-27X, Consolidated Dockets UE-230172/210852, Order 06/08 (March 19, 2024).

⁷² Ware, Exh. KW1-THC at 18:13-20, *citing* RG-31X at 79 (PacifiCorp’s 2023 IRP update at 69).

have to look at the metrics, the credit metrics, what are the long term impacts of that. Essentially *we don't have the capital at this point to build our own*, so we're looking at our purchase agreements.”⁷³ This testimony highlights PacifiCorp's current inability to finance its own projects as a result of its credit situation. Similarly, Dr. Ghosh referenced PacifiCorp's “capital constraints” as a result of its current “financial hurdles.”⁷⁴

37. The concern is that PacifiCorp's precarious financial and credit standing has undercut its ability to develop company-owned infrastructure based on benchmark bids, and that this consideration contributed—at least in part—to cancellation of the 2022AS RFP and corollary downward revision of the interim targets. Because of the opacity of the information supplied by PacifiCorp, it is impossible to know whether this is in fact the case. The mere possibility, however, should be enough to initiate a meaningful and forthright exchange of information between PacifiCorp, stakeholders, and the Commission, before the Commission accedes to *any reduction* in PacifiCorp's interim targets—much less a reduction of the magnitude the Company has proposed with the submission of its 2023 Biennial CEIP Update.

3. The Oregon Public Utility Commission's finding of no continual progress.

38. While the record in this docket shows that PacifiCorp has not met its burden of demonstrating progress toward CETA's 2030 and 2045 standards, it is worth noting that the OPUC found (outside of a contested-case process, on the face of PacifiCorp's 2023 IRP and

⁷³ McVee, Tr. 234:19-25 (emphasis added).

⁷⁴ Ghosh, Tr. 274:13-16.

Clean Energy Plan and subsequent filings),⁷⁵ that PacifiCorp had not demonstrated continual progress toward Oregon’s 2030 clean energy standard as required by Oregon law.⁷⁶ The Oregon Commission’s finding, though certainly not binding on the Utilities and Transportation Commission, shows that other regulators have greeted PacifiCorp’s 2023 resource plans with deep skepticism as to the Company’s demonstration of progress toward similar state clean energy standards.

39. Just as CETA requires PacifiCorp to “demonstrate progress toward” the clean energy mandates of RCW 19.405.040(1) and 19.405.050(1), RCW 19.405.060(1)(b)(iii), so too does Oregon’s HB 2021 require that PacifiCorp “[d]emonstrate ... continual progress within the planning period towards meeting the clean energy targets [of this Act], including demonstrating a projected reduction of annual greenhouse gas emissions[.]” ORS 469A.415(4)(e). The Oregon Commission pays particular attention to this required showing of continual progress because it is statutorily required to ensure continual progress: “The commission shall ensure that an electric company demonstrates continual progress as described in subsection (4)(e) of this section and is taking actions as soon as practicable that facilitate rapid reduction of greenhouse gas emissions at reasonable costs to retail electricity consumers.” *Id.* at (6).

40. Assessing PacifiCorp’s 2023 Clean Energy Plan and related filings—which, like the 2023 Biennial CEIP Update at issue here, were based on PacifiCorp’s 2023 IRP—the Oregon

⁷⁵ The Oregon Commission decision also included consideration of PacifiCorp’s 2023 Integrated Resource Plan Update and “Oregon Planning Supplement,” also referred to in the resulting Oregon Commission order as a Clean Energy Plan Update.

⁷⁶ Exh. KW-7X. *In re PacifiCorp, dba Pacific Power, 2023 Integrated Resource Plan*, OPUC Docket LC 82, Order No. 24-297 at 1 (Aug. 28, 2024).

Commission held as follows: “We find that PacifiCorp[’s] . . . Clean Energy Plan (CEP) does not show continual progress towards meeting House Bill (HB) 2021’s 2030 emissions reduction goals.”⁷⁷ Overall, the Oregon Commission found that “[t]he CEP update generally moves PacifiCorp’s emissions trajectory in the wrong direction, failing to present a coherent plan of action for achieving HB 2021’s emissions reduction requirements.”⁷⁸ In the end, the Oregon Commission said, “we simply cannot find that backsliding on emissions reductions without committing to a plan for improvement is continual progress, even if it represents a company’s best efforts under challenging circumstances and even though PacifiCorp has continued to advance its analysis and planning.”⁷⁹

41. While the mandates of CETA and HB 2021 are structured differently, in the big picture they require the same thing – drastically reducing the greenhouse gas emissions resulting from power production and delivery in their respective jurisdictions. As the Oregon Commission found, through that big-picture lens, PacifiCorp’s plan falls short.⁸⁰

B. The Commission should order PacifiCorp to initiate a near-term resource procurement process by which it can demonstrate necessary progress ahead of the 2030 deadline.

1. Interim targets are the primary tool for demonstrating progress toward CETA compliance.

⁷⁷ *Id.* It is worth noting that PacifiCorp has appealed Order No. 24-297 to the Marion County Circuit Court. *See* PacifiCorp, Petition for Judicial Review, Docket No. LC 82 (Oct. 30, 2024).

⁷⁸ *Id.*

⁷⁹ *Id.* at 2.

⁸⁰ *Id.* at 1. (“We do not find a lack of continual progress due to any one factor.”)

42. Interim targets are meant to be the primary tool for a utility’s demonstration of progress toward CETA’s mandates, in the lead up to 2030 and beyond. Clean energy implementation plans *must* include “a series of interim targets that [] [d]emonstrate how the utility will make reasonable progress toward meeting the standards identified in WAC 480-100-610(2) and (3). . . .” WAC 480-100-640(2). Further, “[e]ach CEIP must include the *specific actions* the utility will take over the implementation period” in tabular and in narrative form. *Id.* at (5), (6) (emphasis added). A utility’s biennial CEIP update must also “include an explanation of how the update will modify targets in its CEIP.” *Id.* at (11).

43. The Company urges the Commission to focus not on the reduced interim targets for the 2022 through 2025 compliance period but on the modeling that shows PacifiCorp meeting CETA’s 2030 mandate.⁸¹ However, while counsel for PacifiCorp claimed the Company is on track to achieving CETA’s 2030 goal, as well as CETA’s 2045 one hundred percent renewable energy goal *by 2032*,⁸² the evidence in the record supporting this assertion is shaky at best and is based on technology not yet proven operational in a commercial setting. For example, the Company’s projection of a 20 percent interim target leap between 2029 and 2030 appears to be based in part on its successful completion of the 500 MW Sodium small modular reactor (“SMR”) project.⁸³ Indeed, testimony from PacifiCorp’s witnesses at the hearing indicated unequivocally that if new technologies, including the SMR, do not come to fruition, the Company will need to rely on CETA’s “off-ramp.”⁸⁴

⁸¹ Rogala, Tr. 134:2-13.

⁸² Rogala, Tr. 134:6-8.

⁸³ Ghosh, Tr. 282:6 – 283:4.

⁸⁴ McVee, Tr. 239:16-21.

44. Further, the Company’s refusal to acknowledge that “interim targets demonstrate how the utility will make such progress towards meeting [CETA] standards” is evidence of its constrained understanding of the law and its obligations thereunder.⁸⁵ CETA and its implementing regulations do not require utilities to identify interim targets merely as a box-checking exercise, but to demonstrate the required progress to ensure utilities are moving toward achievement of the statutory timelines. WAC 480-100-640(2). Indeed, in its adoption of CETA, the legislature emphasized that while the “transition to one hundred percent clean energy is underway, [it] must happen faster than our current policies can deliver. Absent significant and swift reductions in greenhouse gas emissions, climate change poses immediate significant threats to our economy, health, safety, and national security.” RCW 19.405.10(3). CETA’s interim requirements therefore intentionally place a significant burden on utilities to demonstrate progress toward achieving the necessary “swift reductions in greenhouse gas emissions.” *Id.*; *see also, PacifiCorp*, 2024 WL 3415937, at *2 (“[e]ven before the decarbonization deadlines occur, the burden of CETA compliance is not insignificant.”)

45. Essentially, the Company is requesting that the Commission disregard its backsliding on interim targets because, the Company argues, interim targets have no bearing on whether it is demonstrating progress toward achieving CETA standards. Instead, the Company asks the Commission to believe its promise that it is on track not only to meet CETA’s 2030 mandate on time, but also to meet the 2045 one hundred percent renewable target more than a decade *before* the deadline. This illusion finds no support in the record. The Commission should not sanction PacifiCorp’s request to kick the can down the road. Given the significant uncertainty

⁸⁵ McVee, Tr. 170:2-16.

of the future technology forecasted to underpin PacifiCorp’s compliance with the 2030 mandate and the steep increase needed in renewable generation sources between 2029 and 2030 to meet that mandate at all, PacifiCorp’s requested interim target reductions should be denied. The turbulence demonstrated by the Company since the Revised 2021 CEIP was filed does not bode well for its continued progress toward the 2030 mandate if it is not kept on track by regulators.

2. The Commission has broad discretion to fashion a remedy.

46. The Commission has broad authority and substantial discretion in its regulation of utilities in the public interest. *People’s Org. for Washington Energy Res. v. Washington Utilities & Transp. Comm’n*, 104 Wash. 2d 798, 808, 711 P.2d 319, 325 (1985) (“[m]ost states delegate their rate making power to regulatory agencies in very broad terms, basically just directing them to set those rates which the agencies determine to be just and reasonable. Washington is such a state.”); *see also, Washington Utilities & Transp. Comm’n v. United Cartage, Inc.*, 28 Wash. App. 90, 95, 621 P.2d 217, 220 (1981) (“ . . . the Commission, not the courts, is best qualified to promote public policy when acting within the ambit of its administrative function.”) CETA recognizes that the Commission’s broad authority to set and regulate rates includes

consideration and implementation of performance and incentive-based regulation, multiyear rate plans, and other flexible regulatory mechanisms where appropriate to achieve fair, just, reasonable, and sufficient rates and its public interest objectives.

RCW 19.405.010(5). The public interest objectives to be considered by the Commission in its implementation of CETA include:

The equitable distribution of energy benefits and reduction of burdens to vulnerable populations and highly impacted communities; long-term and short-

term public health, economic, and environmental benefits and the reduction of costs and risks; and energy security and resiliency.

Id. at (6). The Commission has the authority to approve, reject, or approve with conditions a utility's CEIP or biennial CEIP update. WAC 480-100-645(2). The Commission may "require more stringent targets than those the utility proposes" and "adjust or expedite interim and specific target timelines." *Id.* The Commission also has authority to order utilities to "issue an all-source RFP if the IRP demonstrates that the utility has a resource need within four years." WAC 480-107-009(2).

47. This authority under the statutes and rules governing the conduct specifically at issue in this case is part and parcel of the Commission's broad authority—or, more accurately, mandate—to regulate the investor-owned utilities that operate in Washington, including PacifiCorp, in the public interest and must be taken into account in light of CETA's directive that "utilities in the state have an important role to play in this transition, and must be fully powered, *through regulatory tools* and incentives, to achieve the goals of this policy." RCW 19.405.010(5) (emphasis added). For starters, the Commission's organic statute provides in sweeping terms the mandate that it "shall ... [r]egulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation." RCW 80.01.040(3). Its rulemaking authority is similarly broad: "The commission is hereby authorized and empowered to adopt, promulgate and issue rules and regulations covering the ... furnishing and supply of gas, electricity, wastewater company services, and water, and any and all services concerning the same, or connected therewith; and generally such rules as pertain to the comfort and convenience of the public concerning the subjects treated of in this title." RCW 80.04.160. And ultimately, the Commission also has a

strict mandate that “[i]t shall be the duty of the commission to enforce the provisions of this title and all other acts of this state affecting public service companies, the enforcement of which is not specifically vested in some other officer or tribunal.” RCW 80.04.470.

48. The Washington legislature has not only framed the relationship between the Commission and regulated utilities through the lens of the Commission’s authority; it has also specified utilities’ unequivocal obligation to obey the Commission. So, for example, “[e]very public service company, and all officers, agents and employees of any public service company, shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this title[.]”. RCW 80.04.380. On top of the penalties for non-compliance specified in CETA itself, RCW 19.405.090, the Commission has a general penalty authority when regulated utilities fail to comply with their obligations under Washington law. Under current circumstances, RNW-NWEC is focused on the Commission’s specific powers under CETA, its broader obligation under its organic statute “to enforce the provisions of ... all ... acts of this state affecting public service companies,” and PacifiCorp’s obligation to “obey, observe and comply with” the Commission’s decisions. RCW 80.04.070; 80.04.380.

49. There appears to be no disagreement among the parties that the Commission has the authority to fashion an appropriate remedy in this docket. While PacifiCorp argues that it would be unprecedented for the Commission to order it to issue an RFP,⁸⁶ Mr. McVee conceded that the Company understands that “the Commission has broad discretion on how to

⁸⁶ McVee, Exh. MDM-2T at 23:1-7.

address and implement CETA.”⁸⁷ There is ample regulatory authority and direction in Washington regarding the issuance of RFPs and Commission authority to uphold state energy policy, thereby making a Commission-ordered RFP appropriate in this docket.

3. The appropriate remedy is an order directing PacifiCorp to pursue near-term procurement of CETA compliant resources through a new all-source RFP in early 2025.

50. PacifiCorp has discussed numerous challenges — the impact of procurement on its credit rating, the need for a revised allocation methodology, repricing out of the 2020AS RFP, the need for Washington-situs resources to meet CETA, increasing market reliance, and more. While the Company is adept at identifying excuses for its backsliding on interim targets, the Commission is tasked with identifying solutions. Mr. McVee indicated that there *may* be a 2025 RFP, subject to the results of the 2025 IRP.⁸⁸ He indicated that the Company plans to develop and propose a new allocation methodology by year-end 2025, a methodology which would then need multi-state buy-in.⁸⁹ He indicated PacifiCorp is in the process of updating its portfolio modeling processes to address specific state needs, not just system needs.⁹⁰ Not one of these plans is confirmed, however, and not one of these plans is laid out in PacifiCorp’s 2023 Biennial CEIP Update. At this point everything is subject to change.

51. For this reason, PacifiCorp would benefit from firm Commission direction to 1) make progress now, not later, toward CETA’s 2030 mandate, 2) prioritize compliance with state policies during resource planning, and 3) improve the level of transparency in its planning.

⁸⁷ McVee, Tr. 201:17-23.

⁸⁸ McVee, Tr. 223:19 – 225:8.

⁸⁹ McVee, Tr. 221:1-18.

⁹⁰ McVee, Tr. 227:13 – 228:13.

RNW-NWEC therefore recommend that the Commission uphold the original interim targets of the 2021 Revised CEIP and order the launch of a resource procurement effort in spring of 2025. These represent the most efficient steps to get PacifiCorp back on track toward meeting CETA’s mandates.⁹¹

52. In summary, it is helpful to recall a statement made by Mr. McVee during the evidentiary hearing. Commissioner Rendahl asked, “why should the Commission not disallow costs as unreasonable if the company continues to wait and push out resource acquisition to the very end, which could have significant cost impacts on customers?”⁹² Mr. McVee’s response was: “we believe the cost impacts to customers are more . . . now than later.”⁹³ The Company’s lopsided reasoning that the risk to customers is higher now—when the Company is around only 30 percent renewable and nonemitting with only five years to reach 80 percent—is a clear indication that the Commission should exercise its broad discretion and issue direct guidance to the Company to take near-term action to put it on track to achieving CETA’s mandates.

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⁹¹ In Order No. 24-297 discussed above, the Oregon Commission indicated that a Commission-ordered RFP may be the correct remedy for PacifiCorp’s failure to demonstrate continual progress and directed the opening of a new docket to “adjudicate our legal authority to order PacifiCorp to issue an 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.” Exh. KW-7X. *In re PacifiCorp, dba Pacific Power, 2023 Integrated Resource Plan*, OPUC Docket LC 82, Order No. 24-297 at 2-3. That adjudication is now ongoing before the Oregon Commission in Docket No. UM 2348.

⁹² Comm’r Rendahl, Tr. 230:17-20.

⁹³ McVee, Tr. 230:21-23.

II. PacifiCorp’s CEIP Should be Subject to Existing UTC Guidance on Energy Equity.

53. Fundamental to CETA is the Legislature’s recognition that the public interest includes “[t]he equitable distribution of energy benefits and reduction of burdens to vulnerable populations and highly impacted communities.” RCW 19.405.010(6). In meeting CETA’s statutory deadlines, utilities are required to “ensure that all customers are benefiting from the transition to clean energy: Through the equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health and environmental benefits and reduction of costs and risks; and energy security and resiliency.” RCW 19.405.040(8). CETA’s energy equity requirements are to be demonstrated through the CEIP process as well, where the Commission’s approval of plans is contingent on their consistency with this requirement, among others. RCW 19.405.060(1)(c)(iii).

54. These principles have been recently interpreted by the Commission in two separate dockets that provide guidance on energy equity and equitable distribution principles. In its Final Order 09 on Cascade Natural Gas Corporation’s 2021 General Rate Case, the Commission explained that in recognition of the fact that “no action is equity-neutral, regulated companies should inquire whether each proposed modification to their rates, practices, or operations corrects or perpetuates inequities.”⁹⁴ Applying the concept of energy equity to the CEIP process, the Commission—in approving PSE’s 2021 CEIP with conditions—imposed Condition 20 requiring minimum designations. This condition requires

⁹⁴ *WUTC v. Cascade Natural Gas Corp.*, Docket UG-210755, Order 09, ¶ 58 (August 23, 2022).

PSE to designate a minimum of 30 percent of the energy benefits of DER solar, DER storage, DR, and EE programs for named communities.⁹⁵ In so doing, PSE must commit to developing a “targeting approach” to identify the “customers and communities with deepest need within the broader category of Named Communities” in consultation with interested parties.⁹⁶

55. Condition 21 of the Commission’s approval of PSE’s 2021 CEIP directs the company to develop mechanisms “for intentionally serving customers in Named Communities in each of its individual DER programs” so as to implement the 30 percent minimum designation requirement in a way that ensures that benefits flow to named communities and vulnerable populations.⁹⁷

56. The Commission’s interpretation of CETA’s requirements, as carried out through its implementation of the law in other dockets, and its articulation of core principles such as energy equity in related settings, should guide its actions with respect to PacifiCorp’s Revised 2021 CEIP. First, establishing consistency in application of the statute according to the legislature’s intent is critical to ensure its effective implementation. *See, Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wash.2d 1, 9–10, 43 P.3d 4, 9 (2002) (legislative intent discerned from the plain language enacted by the legislature, considering the text of the provision in question, the context of the statute in which the provision is found, related provisions, amendments to the provision, and the statutory scheme as a whole).

⁹⁵ *In re Puget Sound Energy CEIP*, Docket UE-210795, Order 08, Appendix A, ¶ 22 (June 6, 2023)

⁹⁶ *Id.*

⁹⁷ *Id.* at ¶ 23.

57. Energy equity involves the fair distribution of benefits and burdens during the production, distribution, and consumption of energy, and implicates not merely the outcome of energy production but the methods, framework, and system of energy production itself. As reflected in CETA, principles of energy equity require active, inclusive, and systemic efforts on the part of both utilities and regulatory bodies to ensure “[t]he equitable distribution of energy benefits and reduction of burdens” to all populations of concern. RCW 19.405.010(6).

A. PacifiCorp should set minimum designations for each DER offering.

58. As discussed in the testimony of Charlee Thompson, PSE’s approved Revised 2021CEIP and associated conditions is a particularly important data point for the Commission to consider in its treatment of PacifiCorp’s approach to the CEIP process, because it represents the Commission’s direct application of CETA’s energy equity goals to another regulated utility within the CEIP process. Moreover, it resulted in a balanced application of the statutory provisions to a utility’s real-world conformance with a new statutory scheme under market conditions similar to those faced by PacifiCorp in the instant proceeding. In particular, the application of a condition imposing minimum designations on PSE represents the Commission’s direct interpretation and application of the legislature’s intent in enacting CETA with respect to energy equity. For all of these reasons, the Commission should impose a similar condition on any future approval of PacifiCorp’s CEIP update.

59. Specifically, as described in Ms. Thompson’s testimony, RNW-NWEC recommend that PacifiCorp be required to set minimum designations for each of its DER program offerings for its named communities.⁹⁸ Setting minimum designations is one of the most

⁹⁸ Thompson, Exh. CT-1T at 6:20 – 7:2.

straightforward ways to ensure equitable distribution of PacifiCorp’s DER programs to the communities who need the resources most. Minimum designations—as their name implies, guarantee that a designated proportion of the Company’s capacity will go directly to benefit underserved and vulnerable communities as defined pursuant to CETA.

60. Without such minimum designations, market barriers are likely to prevent equitable distribution of benefits, because delivering benefits to low-income or otherwise disadvantaged communities often requires a greater investment than does a similar delivery to higher-income or advantaged communities.⁹⁹ Thus minimum designations such as those imposed by the Commission with respect to PSE’s 2021 CEIP can help ensure that vulnerable communities will receive an equitable, though not necessarily equal, share of benefits from a utility’s DER programs.

61. Specifically, the Commission should impose conditions on any PacifiCorp CEIP approval requiring minimum designations for PacifiCorp’s demand response and energy efficiency programs, consistent with the conditions imposed in Order 08 on PSE’s 2021 CEIP. To the extent that PacifiCorp develops distributed solar and storage programs, future CEIP filings should likewise reflect minimum designations for such programs.

62. In determining the level of minimum designations to be imposed, as described in Ms. Thompson’s testimony, the actual percentages of named communities can be balanced with existing state and federal guidance such as the Justice40 initiative and Washington’s Healthy

⁹⁹ Thompson, Exh. CT-1T at 7:9-15; *see also In the Matter of Puget Sound Energy, Inc. 2021 Clean Energy Implementation Plan*, Docket No. UE-210795, Post-Hearing Brief of Front and Centered and NW Energy Coalition, citing the testimony of Roger Colton (March 15, 2023).

Environment for All Act.¹⁰⁰ The initial minimum designation of 30 percent for PSE set by the Commission via Order 08 for PSE’s 2021 CEIP reflects such a balance and can be appropriately applied to PacifiCorp’s CEIP process. In the interests of consistent application of CETA across Washington’s investor-owned utilities, and consistent with existing data available on PacifiCorp’s named communities, RNW-NWEC recommend the Commission apply the same 30 percent minimum designation to PacifiCorp’s DER programs for demand response and energy efficiency as a condition of the current CEIP, and plan to include a similarly calculated minimum designation when and if PacifiCorp establishes distributed solar, storage, or similar programs.¹⁰¹

63. In sum, CETA recognizes that the Commission possesses broad authority to use a variety of mechanisms, including “performance and incentive-based regulation . . . and other flexible regulatory mechanisms” to achieve both just and reasonable rates as well as CETA’s “public interest objectives.” RCW 19.405.010(5). The Commission should use that authority consistent with its recent practice to ensure that CETA’s clear directives are applied consistently, predictably, and fairly across regulated utilities who are subject to its conditions.¹⁰²

¹⁰⁰ Thompson, Exh. CT-1T at 8:10-16.

¹⁰¹ RNW-NWEC’s proposed minimum designations of 30 percent are supported by TEP. Stokes, Exh. SNS-1T at 4:14 – 5:9. Staff has generally supported Ms. Thompson’s recommendation, though with a slightly lower proposed minimum designation of 27 percent, which, while less robust and well-supported by existing Commission precedent would nonetheless be a significant step in the right direction. Simmons, Exh. JNS-25HCT at 3:12 – 4:3.

¹⁰² AWEC has opposed the imposition of minimum designations, in particular Staff’s proposal in this docket. Kaufman, Exh. LDK-1T at 9:13 – 10:3. RNW-NWEC do not believe uncertainty about how benefits are defined and how they should be distributed is sufficient

B. PacifiCorp’s DER programs should be broadened to better serve all low-income customers and named communities.

64. While the Company has articulated in the 2023 update well-intentioned goals to increase community engagement with DER programs, these can and should be improved through the application of quantitative requirements and through broadened applicability across all communities who could benefit from a given program. Specifically, the Commission should require the following measures to increase the participation of named and other vulnerable communities in PacifiCorp’s DER programs: 1) allocation of a specified portion of each DER program budget for named community outreach, recruitment, and participation; 2) minimum participation goals to ensure named community *and* low-income customer representation and greater access by these populations to the benefits associated with DER program benefits; 3) dedicated outreach, education, and recruitment strategies which clearly establish how PacifiCorp will target named communities—including vulnerable populations—for involvement in its DER programs; and 4) expansion of existing incentives beyond highly impacted populations to include low-income and vulnerable populations.

65. These measures, if implemented as conditions to PacifiCorp’s CEIP update, would be consistent with Condition 21 of Order 08 for PSE’s 2021 CEIP. As previously discussed, these early CEIP obligations on the part of regulated utilities are critically important—not

justification for deferring this important and already-established mechanism for achieving CETA’s requirement that benefits and burdens be equitably distributed. PSE collaborated with its Advisory Groups to further guide the implementation of Condition 20, including how benefits are defined and how they should be distributed to named communities. RNW-NWEC agree with AWEC’s suggestion that the Commission direct PacifiCorp to use Advisory Group input to advance this condition. However, RNW-NWEC believe that Advisory Group collaboration during the 2025 CEIP process should be focused on implementation of existing minimum designations rather than on whether and how to set them.

only to “demonstrate progress toward” CETA’s 2030 and 2045 thresholds, but to establish consistent and predictable application of the statute congruent with clear legislative intent.

CONCLUSION

66. RNW-NWEC respectfully request that the Commission adopt its recommendations as articulated herein.

Respectfully submitted this 12th day of November, 2024.

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