

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

PACIFICORP D/B/A/ PACIFIC
POWER & LIGHT COMPANY'S

Revised Clean Energy Implementation
Plan

DOCKET UE-210829

INITIAL BRIEF OF PUBLIC COUNSEL

November 12, 2024

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I. INTRODUCTION

1. PacifiCorp's (or the Company) Biennial Clean Energy Implementation Plan Update (BCEIP) represents a profound planning failure and should be rejected accordingly. Across integrated resource planning (IRP), power cost adjustment and general rate, and clean energy implementation planning (CEIP) dockets, PacifiCorp's insistence on optimizing operations for a single system has harmed Washington residents.
2. The relevant manifestation of PacifiCorp's planning inadequate plan is its decades-long failure to procure or allocate generation resources for Washington. PacifiCorp admits it has the ability to plan for Washington's unique position in its system. Neither its systemwide planning nor its allocation agreement prevent long-term procurement for or the allocation of resources to Washington. Moreover, PacifiCorp admits Washington situs resources would stabilize its power costs, leaving both the Company and its customers in a financially stable position.
3. In choosing to not consider compliance with Washington law as a planning mandate through procurement of Washington generation, PacifiCorp created the current crisis of non-compliance with Washington's Clean Energy Transformation Act (CETA) at its customers' expense.
4. PacifiCorp has given no indication that it plans to remedy its failures and has offered the Washington Utilities and Transportation Commission (Commission) no assurances that it will do so. PacifiCorp's shareholders—and other investor-owned utilities—should be made aware of their planning obligations. Until PacifiCorp remedies its planning failures and begins to make real steps toward CETA compliance, a maximum \$1,000 per day penalty is appropriate.

II. PACIFICORP BEARS THE BURDEN OF PROVING ADEQUATE PROGRESS TOWARD MEETING CETA'S TARGETS

5. PacifiCorp bears the burden of proving adequate progress toward CETA's targets.¹ CETA is, in part, a planning statute that requires electric utilities like PacifiCorp to plan to achieve greenhouse gas neutrality by 2030.² Utilities must plan to reach that target and file CEIPs every four years, with biennial updates, proposing interim clean energy targets through 2030.³ A utility's CEIP is not a theoretical exercise—it must be consistent with its long-range IRP and demonstrate genuine, adequate progress toward meeting CETA's targets.⁴ The utility must meet its clean energy targets at the lowest reasonable cost, considering risk.⁵ Where a utility's progress is inadequate, the Commission may expedite the utility's timeline if the targets can be achieved with, among other factors, better planning.⁶
6. PacifiCorp's status as a large, multi-state utility does not alter its statutory obligations. PacifiCorp has, for more than a decade, relied on market purchases to meet Washington's power needs rather than engage in long-term procurement. PacifiCorp has justified this approach by relying on its claim that "optimizes for its entire system," with deliberate indifference to Washington's unique circumstances. The Commission has consistently warned PacifiCorp of this planning approach in both planning and rate proceedings and PacifiCorp has thus far ignored those warnings. This is a willful planning failure that has harmed PacifiCorp's Washington

¹ *Wash. Utils. & Transp. Comm'n v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-210829, Order 09 ¶ 30 (Mar. 25, 2024) (herein after *PacifiCorp BCEIP Order*).

² RCW 19.405.040(1).

³ RCW 19.405.060(1)(a)(ii).

⁴ *Id.*

⁵ RCW 19.405.040(6)(a)(i).

⁶ RCW 19.405.060(1)(c)(ii).

customers.

7. The Commission has recognized PacifiCorp’s planning failures have significant consequences for its CETA compliance. With its ongoing reliance on market purchases and abject failure to procure or allocate long-term resources to Washington, PacifiCorp cannot meet its burden of proving adequate progress towards its statutory CETA targets.

A. PacifiCorp Has Failed to Heed a Decade of Commission Warnings About Market Reliance Over Long-term Procurement

8. PacifiCorp has ignored its Washington resource obligations for more-than a decade. PacifiCorp has requested—and been granted—waiver after waiver of its duties to issue request for proposals (RFP) despite its IRPs identifying long-term resource needs.⁷ Most recently, PacifiCorp sought approval of an All-Source RFP in 2022 when the Company’s 2021 IRP identified a resource need of 1,345 MW of supply-side generation resources and 600 MW of co-located storage along with 274 MW of demand-side resources.⁸ The Company acquired nothing from that RFP and instead cancelled it.⁹ Rather than focus on long-term resource procurement, PacifiCorp has relied heavily on market purchases to meet Washington’s resource needs.

9. The Commission has warned PacifiCorp of this approach for nearly a decade, beginning with the Company’s planning proceedings. When granting PacifiCorp an RFP waiver in 2015, the Commission directed the Company to incorporate a market reliance risk assessment into its

⁷ *In re PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-111418, Order 01 (Oct. 14, 2011); *In re PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-131670, Order 01 (Oct. 10, 2013); *In re PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-151694, Order 01 (Oct. 29, 2015); *In re PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-170885, Order 01 (Oct. 12, 2017).

⁸ *In re PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-210779, Order 01 (Nov. 12, 2021).

⁹ Response Testimony of Stefan de Villiers, Exh. SDV-1T at 7:5–9 (Aug. 21, 2024).

2017 IRP in order to “clearly identify the Company’s resource needs in 2021 and beyond.”¹⁰

Notwithstanding this clear direction, the Company performed a meager market reliance assessment in its 2017 IRP, with the Commission finding it “substantively similar to [PacifiCorp’s] 2015 assessment and subject to the same criticisms” and did “not perform any assessment of the risks inherent in relying on the market.”¹¹ The Commission gave PacifiCorp yet another chance to consider its market reliance in its 2019 IRP, which was ultimately waived in light of the passage of CETA.¹²

10. The Commission’s warnings carried over into PacifiCorp’s rate proceedings. The Commission gave PacifiCorp a pointed warning in its Order in the Company’s 2021 PCORC:

we are concerned that PacifiCorp has not prudently managed its power costs and that this has exposed Washington customers to significant price increases. PacifiCorp has repeatedly sought waivers from Commission rules that would require the Company to issue an RFP for long-term resources. The Commission has warned the Company over a 10-year period of the need to fully evaluate the risks of its reliance on the market, the need for an active risk management program, and the need to demonstrate the prudence of relying on market transactions to recover power costs.¹³

11. The Commission has recognized PacifiCorp’s favoring of market reliance instead of long-term procurement has ramifications for its compliance with CETA. The Commission made this concern explicit in its Order in the Company’s 2022 PCAM proceeding:

While PacifiCorp is making some small progress towards addressing this Commission’s longstanding concerns [about market reliance], PacifiCorp should have built and should in the future build Washington situs resources or resources in the western balancing area, allocated solely to serving Washington to address both

¹⁰ *In re PacifiCorp*, Docket UE-151694, Order 01 ¶ 11 (Oct. 29, 2015).

¹¹ PacifiCorp’s Acknowledgment Letter Attach. at 9, *In re PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-160353 (May 7, 2018).

¹² PacifiCorp did not file a 2019 IRP after the Commission granted it a waiver following the enactment of CETA. *In re Comm’n Staff Order Granting Exemption*, Docket UE-180259, Order 03 (Nov. 7, 2019).

¹³ *In re PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-210402, Order 06 ¶ 147 (Mar. 29, 2022).

the exposure to wholesale market volatility, *and to meet its CETA obligations.*

Despite our finding that PacifiCorp met its burden for [its 2022 PCAM], we will continue to remain vigilant in our review of PacifiCorp's PCAM, rate, IRP, and *CEIP filings* in the future. In the future, PacifiCorp shall continue to demonstrate that it is properly managing its resource planning as it relates to Washington.

Accordingly, PacifiCorp needs to continue to show it is improving the short position of Washington on a least-cost basis, in accordance with Washington law, which *includes CETA*.¹⁴

12. In short, although planning and rate proceedings have different objectives, they are deeply intertwined in the case of PacifiCorp, which relies on market purchases to meet Washington's needs in place of long-term procurement. The Commission has now warned PacifiCorp that Washington's market exposure has serious implications for its CETA compliance.

B. PacifiCorp's Willful Disregard of Washington's Resource Needs Have Harmed Washington Customers as Market Prices Spiked

13. PacifiCorp's planning failures have been apparent in power cost and rate proceedings. As PacifiCorp itself has identified in its own rate proceedings, its preference for system planning has left Washington "uniquely vulnerable to market purchases."¹⁵ As a result, Washington residents see considerably higher power costs than the rest of PacifiCorp's system.¹⁶
14. In fact, Washington's net power costs have more than doubled since 2020 as energy

¹⁴ *In re PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-230482, Order 07 ¶¶ 135–137 (Oct. 29, 2024) (emphasis added).

¹⁵ Rebuttal Testimony of Ramon J. Mitchell, Exh. RJM-3CT at 13:18–14:1, *In re PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-230482 (May 2, 2024).

¹⁶ Mitchell, Exh. RJM-1T at 14:2–4, *In re PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-230482 (June 15, 2023).

prices have spiked.¹⁷ Market exposure has driven this cost increase¹⁸ and the Company has long known its system planning—which ignores Washington’s procurement needs—requires Washington to meet a higher proportion of its retail load with market purchases than the states in its eastern, more carbon-friendly control area.¹⁹ The ratemaking impacts are clear. PacifiCorp has long known the solution to Washington’s market exposure is long-term procurement. Yet, PacifiCorp has steadfastly refused to procure or allocate Washington, robbing its of lower power costs.

15. PacifiCorp contends here long-term procurement will have substantial cost implications for its Washington customers.²⁰ PacifiCorp has presented no evidence supporting this claim. The Company contends it would cost over \$37 million to comply with higher interim targets.²¹ Rather than providing a complete analysis to support this contention, PacifiCorp provides a “general estimate” of the incremental costs of compliance,²² without consideration of the “offsetting power cost benefits which would reduce the net cost of the resource and reduce the impact on rates.”²³

16. PacifiCorp admits closing Washington’s short position with renewable generation will stabilize its power costs. PacifiCorp witness McVee admits renewables do lower power costs, and indeed have lowered power costs in the past.²⁴ Reduced power costs will benefit the

¹⁷ Response Testimony of Robert L. Earle, Exh. RLE-1T at 3:3–13; U.S. Energy Info Admin., *Table 5.3 Average Price of Electricity to Ultimate Customers: Total by End-User Sector, 2014- Aug. 2024*, https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_5_3.

¹⁸ Earle, Exh. RLE-1T at 4:1–20.

¹⁹ *Id.* at 6:15–18.

²⁰ Rebuttal Testimony of Rohini Ghosh, Exh. RG-2T at 13:9–14:6.

²¹ *Id.* at 14:1–3.

²² *Id.* at 14:5–6.

²³ Ghosh, Exh RG-2T at 14:3–5; Ghosh, PC Cross-Exh. RG-23X at 7 (Public Counsel DR 8(a) and 8(c)).

²⁴ Mathew D. McVee, TR. 179:20–23.

ratepayer and will ease strain on the Company's financial metrics enabling additional investment.²⁵

17. Although the Company admits increased Washington generation will lower power costs, it contends the power cost benefits would not offset any needed capital expenditures. PacifiCorp has not done an analysis of whether this is true.²⁶ At the Evidentiary Hearing, Company Witness Dr. Ghosh could not comment on the net power cost impacts at all.²⁷ The Commission should ignore PacifiCorp's unfounded contention that stricter CETA compliance will raise costs where it has not even offered a basic analysis on the rate impacts of either leaving Washington exposed to the market or of closing Washington's net short position.

C. PacifiCorp's Planning Failures Have Made its CETA Compliance Unrealistic

18. In its BCEIP, PacifiCorp revised its interim 2021–2025 targets substantially downward from a four-year average of 41 percent to a stagnant average of 29 percent.²⁸ For its next compliance period, PacifiCorp proposes grandiose interim targets, requiring a 20 percent jump from its 62 percent 2029 target to its 82 percent 2030 target.²⁹ PacifiCorp can offer the Commission no concrete assurance it will actually meet those targets.³⁰ Notably, PacifiCorp's revised targets leave Washington with significant market exposure through 2029,³¹ whereas the Company's initial interim targets would have closed Washington's net short position by 2024

²⁵ Public Counsel Cross-Examination Exhibit of Matthew D. McVee, Exh. MDM-18X at 3 (PacifiCorp response to Public Counsel's Data Requests No(s). 4-8).

²⁶ Ghosh, TR. 286:2–9.

²⁷ *Id.* at 286:2–22.

²⁸ PacifiCorp CEIP Biennial Report at 6 (filed Nov. 1, 2023).

²⁹ *Id.* at 8.

³⁰ *PacifiCorp BCEIP Order*, ¶ 25.

³¹ PacifiCorp CEIP Report Workpaper, (210829-PAC-CEIP-Biennial-Rpt-WP-Interim-Targets-11-28-23.xlsx) (filed Nov. 28, 2023).

while promising a more realistic plan.³² PacifiCorp's downward revisions are not a result of chance or of factors outside its control, but the result of deliberate planning decisions it has made. PacifiCorp, once again, chose market reliance over long-term procurement to meet Washington's needs.

19. PacifiCorp's planning failure will almost certainly result in CETA non-compliance. As stated by witness Dr. Rohini Ghosh, PacifiCorp's system IRP informs its CEIP, which guides its procurement strategy over the long term.³³ PacifiCorp, however, plans for its entire system. As Commissioner Rendahl observed, systemwide IRP planning washes out the needs for long-term resources allocated to Washington necessary to meet CETA's goals.³⁴

20. By failing to procure long-term resources sooner, or allocate existing resources to Washington, PacifiCorp has allowed itself very little room to meet its statutory targets. PacifiCorp's approach reveals how the Company's proposed targets are unrealistic under its current planning practice. PacifiCorp plans to leap from 62 percent in 2029 to 82 percent in 2030. To determine this is unreasonable, the Commission need only look at the Company's reliance on the Natrium nuclear project. Natrium—initially planned to come online in 2028—has been delayed to 2030 on account of fueling concerns.³⁵ PacifiCorp's own workpapers shows the Company will miss CETA's 2030 target by three to five percentage points if Natrium is delayed any further.³⁶ Although company witness Dr. Ghosh contends the Company can still meet the

³² PacifiCorp's Workpaper, *210829-PAC-WP-Figure 1.1 - P02-MM-CETA 2022-2045 Interim Targets-12-31-21.xlsx* (filed Dec. 30, 2021).

³³ Ghosh, TR. 252:23–25.

³⁴ *Id.* at 225:21–226:8.

³⁵ *Id.* at 183:3–20.

³⁶ *Id.* at 282:18–283:2.

CETA’s 80 percent CETA target in 2030 with a Purchase Power Agreement or another small resource, her contention assumes all other planned procurements go according to plan. This is an unrealistic assumption—Dr. Ghosh admits *all* resources have the risk of delay.³⁷ For example, the Company’s BCEIP workpapers show a need to acquire more-than 1.2 million MWh of solar with storage between 2025 and 2030.³⁸ Any delays in those procurements, for any reason, put CETA compliance further and further out of reach. The point is not that a Natrium delay will cause a near miss of CETA’s 2030 target, but that PacifiCorp’s entire procurement plan is unrealistic.

21. This represents a core planning failure considering the number of renewable resources on its system. Without a doubt, PacifiCorp can solve its CETA compliance problems without substantial capital investment. PacifiCorp already has sufficient renewables on its system to meet Washington’s needs consistent with its Revised CEIP. PacifiCorp has simply refused to use the resources it already has to comply with state law. For example, PacifiCorp has procured more-than 7 million MWh of wind generation since 2020, yet has only allocated Washington 329,000 MWh.³⁹

³⁷ *Id.* at 331:9–17.

³⁸ PacifiCorp CEIP Report Workpaper (210829-PAC-CEIP-Biennial-Rpt-WP-Interim-Targets-11-28-23.xlsx) (filed Nov. 28, 2023).

³⁹ Rebuttal Testimony of Michael G. Wilding, Exh. MGW-1Tr at 8:1–9:3, *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-230482 (filed May 28, 2024).

2022 Actual Wind Generation		
	2022 Wind Generation from Resources currently in Washington Rates	2022 Wind Generation from resources that were in Washington rates in 2020
	Total Generation (MWh)	Total Generation (MWh)
Glenrock I	328,535	
Glenrock III	123,123	
Goodnoe Hills	265,804	265,804
High Plains	383,965	
Leaning Juniper	253,408	253,408
Marengo I	391,503	391,503
Marengo II	196,630	196,630
McFadden Ridge	115,716	
Dunlap	469,881	
Foote Creek I	208,749	
Pryor Mountain Wind	814,117	
Rolling Hills	286,356	
Seven Mile Hill I	413,081	
Seven Mile Hill II	86,843	
Cedar Springs II Wind	603,521	
Ekola Flats Wind	805,728	
TB Flats Wind	1,488,986	
Total MWh Production	7,235,946	1,107,345
WA Allocation Factor	7.97%	22.31%
Total Wind MWh Production allocated to WA	576,422	247,004
Wind Generation as a Percentage of WA Load	12.41%	5.32%

22. PacifiCorp has chosen to acquire clean resources for its entire system, ignoring its clean energy obligations in Washington. PacifiCorp admits it can allocate additional clean resources to Washington. PacifiCorp acknowledges that the western states on its system share different policy goals with respect to renewables.⁴⁰ PacifiCorp acknowledges that it must adapt the way it conducts its IRP to meet different state policies.⁴¹ PacifiCorp also acknowledges that it will need to incorporate situs resources to better meet state policy.⁴² Neither its systemwide planning, geographic diversity, nor its allocation agreements prevent long-term procurement for or the

⁴⁰ Ghosh, TR. 191:1–13; 202:17–21; 204:17–24; 312:1–7.

⁴¹ *Id.* at 312:1–7.

⁴² *Id.* at 204:19–24

allocation of resources to Washington.⁴³ In fact, had PacifiCorp planned accordingly, it would not have needed to change its assumptions about thermal resources or Washington’s retail load.

23. PacifiCorp has done nothing to demonstrate a commitment to plan to meet Washington’s CETA targets. PacifiCorp contends it acquired fewer resources than anticipated in the 2020 All Source (AS) RFP because some of the shortlisted projects required “substantial additional analysis.”⁴⁴ Presumably, no analysis was ever completed. PacifiCorp does not even have any shortlist resources to analyze for the current compliance period, because it cancelled its 2022 AS RFP.

24. PacifiCorp still has no definite procurement plans. PacifiCorp’s 2023 IRP indicated a plan to issue an AS RFP in 2024.⁴⁵ However, PacifiCorp stated it “does not have plans to issue an All-Source Request for Proposals at this time” in its 2023 IRP Update.⁴⁶ PacifiCorp cannot commit to any procurement actions in 2025.⁴⁷ If an RFP is issued, it will not bring resources online until at least 2027, but more likely 2028 or 2029.⁴⁸

25. PacifiCorp’s planning strategy will almost certainly result in CETA non-compliance. PacifiCorp can meet CETA’s requirements using any resource. Rather than procure resources or allocate resources to Washington, PacifiCorp has relied on the market. Market reliance is not a resource and PacifiCorp’s planning strategy will harm Washington customers.

⁴³ McVee, TR. 180:1–15; 192:7–10.

⁴⁴ McVee, Exh. MDM-1T at 22:11-22:4.

⁴⁵ PacifiCorp, *Wash 2021 Integrated Resource Plan Two-Year Progress Report (Amend. Final) Vol. 1, In re PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-200420 (May 31, 2023).

⁴⁶ *In re PacifiCorp*, Docket UE-200420, Informational Update for its 2023 Integrated Resource Plan (April 1, 2024).

⁴⁷ McVee, TR. 182:24–183:2.

⁴⁸ Ghosh TR. 288:10–14.

III. THE COMMISSION SHOULD PENALIZE PACIFICORP FOR ITS PLANNING FAILURE

26. PacifiCorp has had five years to plan to meet CETA’s clean energy goals. The evidence shows PacifiCorp’s reduced interim targets are not the result of unanticipated circumstances or forces beyond its control. They are a result of core planning failures on the part of PacifiCorp.

27. PacifiCorp has opted for a “don’t worry” approach to clean energy procurement.⁴⁹ PacifiCorp can offer only vague assurances it will meet CETA’s statutory targets.⁵⁰ PacifiCorp “declined to clearly say that it was on track to meet the 2030 or 2045 interim targets.”⁵¹ It has no definite procurement plans that can realistically bring it into compliance. PacifiCorp’s deliberate failure to plan will expose Washington residents to higher power costs for years to come.

28. Penalties are appropriate here. The Commission may take enforcement action against PacifiCorp for its failure to comply with CETA’s planning requirements.⁵² A complaint proceeding is unnecessary—the Commission can impose penalties in any proceeding in which a utility’s failure to comply with RCW 19.405 is at issue.⁵³

29. As demonstrated by the testimony of Public Counsel witness Stefan de Villiers, PacifiCorp’s long disregard for Washington law warrants the maximum statutory penalty for its noncompliance with CETA and its patent failure to demonstrate on the record how it will meet CETA’s statutory targets.⁵⁴ Nothing in the record on this—or any other docket—demonstrates

⁴⁹ McVee, TR. 243:9–22.

⁵⁰ *Id.* at 246:5–6.

⁵¹ *PacifiCorp BCEIP Order*, ¶ 25.

⁵² WAC 480-100-665(1).

⁵³ WAC 480-100-665(2)(c).

⁵⁴ De Villiers, Exh. SDV-1T.

facts warranting any mitigation or suspension of penalties.⁵⁵The Commission should consider the analysis of the UTC Enforcement Criteria outlined in the testimony of witness De Villiers.

30. PacifiCorp’s failure to comply with the law is serious. PacifiCorp’s procurement strategy will continue to leave Washington with significant market exposure through 2030 and will make it nearly impossible to meet CETA’s targets without substantial, last-minute capital investment. The ratemaking impacts of PacifiCorp’s planning decisions will work a profound hardship on Washington ratepayers and the future health of the environment. The Commission should not send the signal to PacifiCorp—or any other electric utility—that it can freely fail to plan to meet CETA’s requirements without consequence.

31. The other enforcement criteria support penalties. The Company did not self-report its failure, and in fact, has not been candid about whether it can even meet CETA’s 2030 target. The Company has not been cooperative. It failed to incorporate SCGHG in its initial CEIP without Staff opening penalty proceedings. It continues to fail to cooperate by dragging its feet in proposing real solutions like a new allocation methodology and has stopped working with its framework issues working group. PacifiCorp has a long history of being granted “significant leniency” when it comes to the issue of planning. The Commission has waived requirement, extended deadlines, and granted exemptions to PacifiCorp. Without a clear consequence, borne by PacifiCorp’s shareholders, PacifiCorp will continue to flout the law.

32. PacifiCorp is a sizable and sophisticated company. Without a doubt, it has the resources to properly plan. A penalty of \$1000 per day—\$365,000 per year—is a minor penalty

⁵⁵ *Id.* at 14:13–19.

considering the vast resources PacifiCorp has failed to utilize to plan for the benefit of its customers.⁵⁶

IV. CONCLUSION

33. PacifiCorp has continued its tradition of failing to plan for Washington's specific needs. PacifiCorp has been granted significant leniency, but the Commission has nevertheless warned PacifiCorp of the problems with its planning approach for a decade. As the Commission has recognized, PacifiCorp's system planning fails to consider Washington's needs and Washington law, including CETA. PacifiCorp's steadfast refusal to plan for Washington warrants penalties as authorized by CETA and the Commission's rules. For these reasons, Public Counsel recommends the Commission reject PacifiCorp's Biennial CEIP update.

DATED this 12th day of November 2024.

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⁵⁶ *Id.* at 12:18–13:2.