

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION)	DOCKET UE-210829
)	
Complainant,)	
)	
v.)	
)	
PACIFICORP d/b/a/ PACIFIC POWER &)	
LIGHT COMPANY,)	
)	
Respondent.)	

**INITIAL POST-HEARING BRIEF OF THE
ALLIANCE OF WESTERN ENERGY CONSUMERS**

November 14, 2024

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I. INTRODUCTION

1 Pursuant to the Washington Utilities and Transportation Commission’s (“Commission”) Order 11 in the above-referenced docket, the Alliance of Western Energy Consumers (“AWEC”) hereby files this Post-Hearing Brief. AWEC’s brief in this matter recommends that the Commission approve PacifiCorp’s 2023 Biennial Update and reject certain recommendations and conditions proposed by other parties to this proceeding for which AWEC has concerns. For those recommendations and conditions not addressed herein, AWEC takes no position.

2 AWEC’s position on these issues is founded on a commitment to maintaining reasonable costs for customers and to the regulatory process. Parties’ recommendations that AWEC opposes would incentivize PacifiCorp to acquire costly resources with little or no long-term benefit and would usurp the utility’s traditional role by directing PacifiCorp to take certain actions or make certain assumptions in the future without the benefit of information necessary to determine whether such actions and assumptions are reasonable. AWEC understands and shares parties’ frustration that more progress toward CETA’s requirements has not been made at reasonable cost to customers, but the remedy for this, if one is needed, is the Commission’s penalty authority. The Legislature clearly identified the consequence for a utility’s failure to achieve CETA’s requirements, and it was not for the Commission to step into the managerial shoes of the utility; rather it was for the Commission to maintain its traditional role as an economic regulator that reviews and adjudges the actions of the utility after-the fact.

II. BACKGROUND

3 PacifiCorp filed its Washington 2023 Clean Energy Implementation Plan (“CEIP”) Biennial Report (“2023 Biennial Update”) on November 1, 2023. In the 2023 Biennial Update,

PacifiCorp updated its interim targets for renewable energy and energy efficiency based on updated information since the Company’s Initial CEIP, in addition to updating its Customer Benefit Indicators (“CBIs”), public engagement and incremental cost analysis. For interim targets, PacifiCorp seeks to revise its 2023, 2024 and 2025 interim targets as follows:

	2023	2024	2025
2021 Revised CEIP	31%	40%	60%
2023 Biennial CEIP Update	26%	25%	33%

4 At its March 22, 2023, open meeting, the Commission set this matter for adjudication. PacifiCorp subsequently filed testimony in support of its amended interim targets, citing changed circumstances including the lack of agreement on a new multi-state allocation methodology, significant repricing of renewable resource bids in its 2020 all-source request for proposals (“2020 AS RFP”), supply chain issues, rate impacts of continuing high energy market prices and competition for short-term contract options in light of increased demand for CETA-compliant resources. PacifiCorp also updated its original CBIs and metrics summary table for clarity and to communicate results. Finally, PacifiCorp updated its Incremental Cost Analysis to reflect “...updated interim and specific targets and actions, resulting in an average \$1.35 million annual cost to implement PacifiCorp’s CETA strategies.”¹

5 In their response and cross-answering testimony, AWEC, Staff, Public Counsel, Renewable Northwest (“RNW”), Northwest Energy Coalition (“NW Coalition”), The Energy Project (“TEP”) and Columbia River Inter-Tribal Fish Commission (“CRITFC”) made a number

¹ McVee, Exh. MDM-1T at 8:12-14.

of recommendations to the Commission. Staff and Public Counsel recommend the Commission reject PacifiCorp’s 2023 Biennial Update and its associated request to lower its interim targets.² In the event that the Commission decides not to reject PacifiCorp’s filing, Staff recommends that the Commission impose eight conditions related to a number of issues including the allocation methodology used by PacifiCorp, resource acquisition, and interim targets and minimum designations of benefits from distributed energy resources to flow to named communities (“minimum designations”).³ NWEAC and TEP focus their testimony on minimum designations and recommend the Commission adopt conditions that would require PacifiCorp to establish a minimum designation to named communities of 30 percent for distributed energy and energy efficiency program offerings, as opposed to Staff’s recommended 27 percent.⁴ RNW focuses its testimony on PacifiCorp’s CETA-compliant resource acquisitions.⁵ CRITFC’s testimony provides background information on the organization and makes a number of recommendations related to coordination and benefits for the Yakama Nation.⁶ CRITFC’s recommendations were generally supported in cross-answering testimony by Staff and NWEAC.⁷

6 In its cross-answering testimony, AWEC responded to the recommendations of Staff, NWEAC and RNW related to whether the Commission should approve PacifiCorp’s 2023 Biennial Update, and if so, which conditions are appropriate for the Commission to adopt. AWEC’s cross-answering testimony recommends that the Commission reject certain conditions or parts of

² Simmons, Exh. JNS-1HCT at 2:14; Earle, Exh. RLE-1T at 2:11-21.

³ Simmons, Exh. JNS-19, as corrected at the hearing; Hearing Tr. Vol. VI at 338:20-339:11.

⁴ Thompson, Exh. CT-1T at 16:1-23; Stokes, Exh. SNS-1T at 4:14-7:21.

⁵ Ware, Exh. KW-1T at 21:17-22:19.

⁶ DeCoteau, Exh. AKD-1T; Earle, Exh. RLE-1T.

⁷ Simmons, Exh. JNS-25HCT at 11:14-17:10; Thompson, Exh. CT-3T.

conditions related to the allocation methodology used by PacifiCorp, PacifiCorp's resource acquisition, interim targets and minimum designations.

7 In its rebuttal testimony, PacifiCorp addressed many of the criticisms raised by other parties to this proceeding and maintained its position that its 2023 Biennial Update should be approved, with reduced targets.⁸

III. ARGUMENT

8 The issue before the Commission in this case is related to PacifiCorp's 2023 Biennial Update, and whether its request to amend interim targets for the period covered by the 2023 Biennial Update – calendar years 2022-2025 – should be approved. Staff, RNW, NWEC and Public Counsel assert that PacifiCorp has not taken appropriate actions to acquire resources in order to meet the interim targets included in its 2021 CEIP, and that this should serve as a basis for the Commission to either deny PacifiCorp's request to lower its interim targets in the 2023 Biennial Update in this phase of the proceeding, or require the Company to engage in specific resource acquisition actions. While there is significant testimony offered by some of the parties to this case related to PacifiCorp's long-term progress in resource acquisition and its likelihood of meeting CETA's 2030 greenhouse gas neutral standard, the fact remains that the scope of issues properly before the Commission in this case is narrow and that the Commission's authority, though broad, is not limitless. Moreover, the remedy for imprudent resource acquisition decisions on the part of PacifiCorp should not be shifting risk to PacifiCorp's customers via a decision in this case that incentivizes PacifiCorp to make imprudent, short-term

⁸ McVee, Exh. MDM-2T; Ghosh, Exh. RG-2T.

resource procurement decisions at an unreasonable cost. This is the likely result if the Commission refuses to reduce PacifiCorp's interim targets, as requested.

A. The Commission should approve PacifiCorp's 2023 CEIP Biennial Update, including its updated interim targets.

9 In its 2023 CEIP Update, PacifiCorp has provided the Commission with sufficient evidence to support lowering its interim targets for 2023, 2024 and 2025. As PacifiCorp Witness McVee testified, the delay in reaching an agreement for a new allocation methodology in 2023, assumptions around thermal resources serving Washington customers, lack of resource procurement from the 2020 AS RFP following re-pricing from short-listed resources, and higher retail load over the four-year progress period all support a reduction to its currently approved interim targets.⁹ Importantly, PacifiCorp believes it will comply with CETA's 2030 mandate,¹⁰ and that the Company expects to achieve CETA's 2045 standard more than a decade early, by 2032.¹¹ Witness McVee also testified that the Company's analysis demonstrates that lowering PacifiCorp's interim targets is "going to be saving customers money" relative to costs that would be incurred to meet PacifiCorp's current interim targets.¹²

10 The reality of the situation is this: it is highly unlikely that PacifiCorp will be able to acquire long-term CETA-compliant resources that would be online in time for the Company to potentially achieve its 2025 interim target, thus leaving the Company with the option of meeting its obligations with short-term CETA resources if indeed they are available. As PacifiCorp

⁹ McVee, Exh. MDM-1T at 13:11-18.

¹⁰ *Id.* at 12:13-13:2; Hearing Tr. Vol. VI at 242:23-23.

¹¹ Hearing Tr. Vol. VI at 220:3-12.

¹² *Id.* at 243:4-8.

Witness McVee testified at hearing, PacifiCorp “is not going to be able to have a resource built for 2025,”¹³ which in turn means that PacifiCorp “either [has] to essentially go out and start buying on the short-term market, whatever’s available, procuring RECs, whatever’s available, to try to get something that is not supported by the data that we have right now.”¹⁴ No party to this proceeding appears to dispute the fact that as things sit today, it is not possible that PacifiCorp could acquire a long-term CETA compliant resource that would be online in time for it to meet its currently approved interim targets for 2023, 2024 and 2025 even on an average basis. In fact, this reality appears to be recognized by Staff’s and RNW’s recommended remedies to direct future resource acquisition beyond the term of the first compliance period¹⁵ and to lock in specific interim targets in a future CEIP not yet before this Commission.¹⁶ Nevertheless, Staff, Public Counsel and RNW advocate that the Commission keep PacifiCorp’s current interim targets.

11 Keeping PacifiCorp’s currently approved interim targets only serves to incentivize the Company to make costly, short-term acquisitions that will not contribute to the Company’s ability to meet its 2030 compliance obligations. As PacifiCorp Witness Dr. Ghosh testifies, the cost analysis for CETA-compliant resources provided by the Company is based on long-term proxy resources,¹⁷ which PacifiCorp Witness McVee testified are effectively unavailable.¹⁸ In terms of pricing for short-term resources, Dr. Ghosh testified that while specific pricing is not yet

¹³ Hearing Tr. Vol. VI at 244:11-12.

¹⁴ *Id.* at 244:13-17.

¹⁵ Simmons, Exh. JNS-19 at 4:19-5:2 (Staff’s recommendations related to 2025 Resource Acquisition and Interim Targets); Ware, Exh. KW-1T at 22:10-19.

¹⁶ Simmons, Exh. JNS-19 at 5: 4-6.

¹⁷ Hearing Tr. Vol. VI at 293:4-7.

¹⁸ *Id.* at 244:11-12.

known, “...as many people have talked about...there’s obviously a lot of competition out here, I think for CETA-compliant resources, short-term or long-term,”¹⁹ and that the Company’s cost analysis of available resources is “definitely the best-case scenario of...an affordable resource. It’s very possible that the actual prices, particularly in the near term to get something this quickly, would be higher.”²⁰

12 While the Commission has recently reiterated that it does not expect “rote compliance” with interim targets²¹ and that it will consider the specific facts and circumstances when considering a utility’s lack of compliance with interim targets,²² this does not eliminate PacifiCorp’s incentive to procure short-term CETA-compliant resources, if available. Given the choice between the risk of a prudence disallowance for expensive resources that allow the Company to meet or come much closer to its currently approved interim targets and the risk of administrative penalties for substantially missing its interim targets, the Company will most certainly choose the risk with which it has at least some opportunity to mitigate risk and recover costs from customers.

13 Cost concerns aside, any resources that PacifiCorp procures for short-term compliance will not contribute to the Company achieving compliance in 2030 – they will only serve to help PacifiCorp avoid administrative penalties that could be levied by the Commission. By definition, these resources are not the lowest cost, considering risk resources to achieve CETA’s 2030

¹⁹ Hearing Tr. Vol. VI at 294:4-7.

²⁰ *Id.* at 294:8-11.

²¹ *In re Puget Sound Energy*, Docket UE-210795, Order 14 at ¶ 11 (Nov. 8, 2024) (“The Commission has stated in prior orders that rote adherence to interim targets is not anticipated.”).

²² *See id.* at ¶ 10 (Commission noting that it will review Puget Sound Energy’s compliance with its interim targets based on the facts and circumstances in a compliance proceeding).

greenhouse gas neutral compliance obligations because they will not exist in PacifiCorp’s portfolio in 2030. Resources that PacifiCorp would procure solely to meet its interim targets are thus *per se* unreasonable and the Legislature was clear in its intent to provide safeguards against such unreasonable costs to customers.²³

14 If the Commission is concerned that PacifiCorp has not made prudent resource acquisitions to date, then it should evaluate the economic impacts of this imprudence in a future ratemaking proceeding in which the Commission is evaluating PacifiCorp’s requested cost-recovery for short and long-term resources. The Commission should not – as some parties advocate here – reach a decision that incentivizes PacifiCorp to make imprudent, short-term resource acquisitions simply to meet approved interim targets.

B. The Commission should reject certain conditions recommended by Staff, Public Counsel, RNW, and NWEA.

15 Staff, Public Counsel, RNW and NWEA each offer a number of recommendations that they believe the Commission should adopt in the event that it decides to approve PacifiCorp’s 2023 CEIP Biennial Update. NWEA does not have concerns with Staff Conditions 1, 3, 4 and 8.

i. The Commission should reject Staff Condition 2.

16 In its Condition 2, Staff proposes that “[f]or all future CEIP filings, including the 2025 CEIP, PacifiCorp shall use the allocation methodology that is formally approved by the

²³ RCW 19.405.010(2), which provides in relevant part, “[i]n implementing this chapter, the state must prioritize the maximization of family-wage job creation, seek to ensure that all customers are benefitting from the transition to a clean energy economy, and provide safeguards to ensure that the achievement of this policy does not impair the reliability of the electricity system *or impose unreasonable costs on utility customers.*” (emphasis added).

Commission at the time of the CEIP filing. This directive applies to all subsequent CEIPs and IRPs 2025 and beyond.”²⁴ The Condition goes on to require that “in the Company’s next general rate case, PacifiCorp will submit several new allocation methodology options. Each option will include an increase (from what the WIJAM currently allocates) in the allocation of renewable and non-emitting resources to Washington from current allocations. In addition to presenting several different methodology options for increasing the allocation of renewable and non-emitting resources for Washington, the Company shall provide power cost modeling for each methodology option presented to allow for the evaluation of the potential rate impact of each.”²⁵

17 As set forth in AWEC’s cross-answering testimony, AWEC does not specifically oppose the portion of Staff’s Condition 2 that requires the Company to use an approved allocation methodology in future CEIP proceedings, though an overly prescriptive approach may foreclose other efficiencies to the detriment of PacifiCorp’s Washington customers.²⁶ In particular, AWEC is concerned about the interaction in timing between PacifiCorp’s 2025 rate case and the analysis and filing of its 2025 CEIP. If the Company plans to propose a new allocation methodology in its 2025 general rate case that is ultimately approved, it is unclear whether the Company would be able to incorporate those results in time for its 2025 CEIP filing. If the Company cannot incorporate the Commission’s decision, then PacifiCorp’s CEIP will be inconsistent with the ultimately approved allocation methodology. A more flexible approach is likely more ideal.²⁷

²⁴ Simmons, Exh. JNS-19 at 1:20-2:2.

²⁵ *Id.* at 2:3-11.

²⁶ Kaufman, Exh. LDK-1T at 5:17-6:11.

²⁷ *Id.*

AWEC opposes the second requirement in Staff’s Condition 2, as it would serve as a Commission pre-determination of outcomes as part of this proceeding for issues that would not actually be before this Commission until a future filing and without the support of substantial evidence on the record in this proceeding.²⁸ Agency decisions must be supported by substantial evidence, which means “evidence of a ‘sufficient quantity...to persuade a fair-minded person of the truth and correctness’ of the agency action.”²⁹ While Staff purportedly presents PacifiCorp with options for presenting various allocation methodologies, all of them must include an increased allocation of renewable and non-emitting generation to Washington. Thus, Commission adoption of Staff’s condition would pre-approve PacifiCorp’s increased allocation of renewable and non-emitting resources for Washington customers compared to the WIJAM, but without *any* supporting evidence and analysis that such an outcome would result in fair, just, reasonable and sufficient rates in Washington.³⁰ Or, for that matter, what the political implications would be among the six states that PacifiCorp serves given that a higher allocation to Washington would necessarily result in a lower allocation to other states. While increased allocation of renewable and non-emitting resources for Washington customers could be an appropriate outcome, the Commission must consider whether this outcome is appropriate in the proceeding in which it evaluates PacifiCorp’s proposed allocation methodology.

²⁸ *Id.* at 6:12-16.

²⁹ *Campbell v. Emp’t Sec. Dep’t*, 180 Wn.2d 566, 571 (2014) (internal citations omitted).

³⁰ Kaufman, Exh. LDK-1T at 6:16-7:4.

ii. *The Commission should reject Staff Condition 5.*

19 Staff condition 5 mandates that PacifiCorp “shall not cancel, suspend, or terminate any RFP that originates from resource needs identified in the 2025 IRP,” and clarifies that “[a]ll prudency decisions will be determined by the Commission in a general rate case or other appropriate filing such as annual power cost adjustment filings.”³¹

20 The Commission lacks statutory authority to approve the part of this condition that would preclude PacifiCorp from canceling, suspending or terminating any RFP that originates from resource needs identified in the 2025 IRP. The Commission is an economic regulator charged with regulating “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.”³² While the Commission’s authority is broad, the Commission’s general grant of authority must be interpreted within the context of more specific and recently enacted provisions.³³ In the case of CETA, enforcement provisions include penalties subject to the process set forth in RCW 19.405.090 with a specific role for the Commission as contained therein.³⁴ RCW 19.405.090(9), requires the Commission to “determine compliance with the requirements of this chapter” for investor-owned utilities, which again includes penalties for utility non-compliance. There is no language in CETA that provides the Commission with explicit authority to usurp the business discretion typically afforded to

³¹ Simmons, Exh. JNS-19 at 4:19-5-2, as corrected at hearing.

³² RCW 80.01.040(3).

³³ See e.g. *Am. Legion Post No. 149 v. Dep’t of Health*, 164 Wn.2d 570, 585-586 (2008) (“If there is an apparent conflict between two provisions, the more specific and more recently enacted statute is preferred.”).

³⁴ RCW 19.405.090.

utilities, stepping out of its role as an economic regulator and into the shoes of utility personnel by directing specific resource procurement practices or outcomes. In fact, doing so may conflict with the Commission's authority to regulate in the public interest if the process or resources determined available therefrom are not the lowest cost, considering risk compliance strategy for PacifiCorp.

21 Legal authority aside, doing so is not consistent with sound regulatory policy. Utilities are compensated for the risk associated with providing service through the rate of return authorized by the Commission. When a commission steps in the shoes of the utility, it disrupts the balance of risk allocated between ratepayers and shareholders. Further, if the Commission directs a specific action and the outcomes proves to disadvantage customers, a prudence disallowance is effectively precluded because the utility is acting in accordance with Commission direction.³⁵ While Staff's desire to ensure that PacifiCorp is procuring CETA-compliant resources to meet its obligations is understandable, this condition only serves to create uncertainty and reduce PacifiCorp's risk of compliance.³⁶ If PacifiCorp does not comply with its CETA requirements, then the appropriate remedy is to impose the penalties authorized by the Legislature, not to manage the utility's operations.

22 Finally, similar to its concerns with Staff Condition 2, AWEC is also concerned that this condition seeks to constrain outcomes that would be subject to Commission review in future proceedings. As AWEC noted in testimony, "[t]he Commission retains the ability, in future

³⁵ Kaufman, Exh. LDK-T at 8:4-12.

³⁶ *Id.*

proceedings, to both determine appropriate interim targets and then to determine whether PacifiCorp's actions to meet approved interim targets are prudent.”³⁷

iii. The Commission should reject Staff Condition 6.

23 Staff Condition 6 addresses interim targets and requires that “PacifiCorp’s 2025 CEIP will include a 2029 interim target of at least 73 percent of retail sales supplied by non-emitting and renewable resources, as modeled in its Revised 2021 CEIP.”³⁸

24 As discussed above, AWEC recommends that the Commission approve PacifiCorp’s revised interim targets as set forth in its 2023 Biennial Update. In addition, Staff’s Condition 6 suffers from the same flaws as its Conditions 2 and 5 – it effectively predetermines the outcome of a future Commission proceeding (PacifiCorp’s 2025 CEIP), and without substantial evidence. Moreover, adoption of this condition would substitute the Commission’s judgment for that of PacifiCorp’s. If PacifiCorp misses its 2030 obligations, under CETA, the Commission has penalty authority to address that issue. Directing a particular outcome, particularly without analysis or evidence in support of that outcome, is also bad policy for the same reasons discussed in response to Condition 5.

iv. The Commission should reject Staff Condition 7 and similar recommendations from NWEAC and TEP.

25 Staff’s Condition 7 requires the Company to “work with Advisory groups to designate at minimum 27% of benefits measured across each component of distributed energy resources to

³⁷ *Id.* at 8:1-3.

³⁸ Simmons, Exh. JNS-1HCT at 6:6-8.

flow to named communities during the 2026-2029 compliance period.”³⁹ NWEAC and TEP make a similar recommendation but increase the percentage to 30%.⁴⁰ AWEC maintains its concerns that these conditions are unclear, and thus it is not possible to determine whether they are reasonable. Specifically, it is “unclear how benefits are defined and will be determined to ‘flow’ to named communities during the next compliance period.”⁴¹ AWEC is also concerned about an overly prescriptive approach to minimum designations and recommends instead that the Commission direct PacifiCorp to come with a proposal as part of its 2025 CEIP that identifies how “benefits” from specific resources can “flow” to particular customers.

- v. *The Commission should reject Renewable Northwest’s recommendation that the Commission order PacifiCorp to pursue the near-term procurement of new clean resources on an expedited basis.*

26 RNW argues that PacifiCorp has not demonstrated that there is a credible basis for the Commission to reduce PacifiCorp’s interim targets as requested by PacifiCorp.⁴² Instead, RNW argues that the Commission should order PacifiCorp to pursue procurement of CETA-compliant resources on an expedited basis. Specifically, RNW recommends that “an all-source RFP be released 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...”⁴³ However, as

³⁹ *Id.* at 6:10-13.

⁴⁰ Thompson, Exh. CT-1T at 9:9-11; Stokes, Exh. SNS-1T at 2:21-7:21.

⁴¹ Kaufman, Exh. LDK-1T at 9:18-19.

⁴² Ware, Exh. KW-1T at 21:17-22:9.

⁴³ *Id.* at 22:14-17.

discussed above, the record in this case demonstrates that PacifiCorp will not be able to procure long-term resources in time for it to meet its current interim targets, which are the subject of this proceeding. In the long-term, the Commission does not need to order PacifiCorp to pursue CETA-compliant resources on an expedited basis. PacifiCorp is already appropriately incentivized to make prudent resource acquisitions given its compliance obligation in 2030, and it has a narrowing window to do so. More prescriptive guidance from the Commission only serves to shift risk from PacifiCorp's shareholders to its customers, and for the reasons discussed in response to Staff Conditions 5 and 6, above.

IV. CONCLUSION

27 For the reasons discussed herein, the Commission should approve PacifiCorp's 2023 Biennial Update including its request to lower its interim targets for 2023, 2024 and 2025. Further, if the Commission believes that conditioning PacifiCorp's 2023 Biennial Update is necessary, it should reject Staff conditions 2, 5, 6 and 7, RNW's recommendation related to resource procurement, and NWECC's condition related to minimum designations.

Dated this 12th day of November 2024.

Respectfully submitted,

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