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-210892

REPLY BRIEF OF PUBLIC COUNSEL

November 27, 2024

I. INTRODUCTION

1. For years, the Washington Utilities and Transportation Commission (Commission) has directed PacifiCorp (the Company) to build situs resources to meet Washington's energy needs and limit its market exposure. PacifiCorp has persistently ignored these warnings and in doing so placed itself in a position where it cannot reasonably comply with its clear statutory mandate.

2. PacifiCorp bears the burden of proving it can meet its Clean Energy Transformation Act (CETA) obligations through its market reliance strategy. PacifiCorp fails to meet that burden, and instead relies on a series of excuses and changed circumstances allegedly beyond its control. PacifiCorp casts this case as an issue of whether and what it should procure to meet its short-term clean energy targets. In fact, this is a case of PacifiCorp's woefully deficient planning from the start placing CETA compliance out of reach absent transformative technological advancements and costly, last-minute procurements exposing its customers to substantial—and avoidable—rate shock.

3. The Company has not complied with the Commission's directives in the past and provides no evidence it will comply with them now. PacifiCorp has taken advantage of the Commission's significant leniency and has shown that only a penalty or disallowance will motivate it to develop an adequate Clean Energy Implementation Plan (CEIP). The Commission should impose the maximum penalty of $1000 per day until PacifiCorp files a compliant CEIP.

II. PACIFICORP'S MODEL ASSUMPTIONS ARE IRRELEVANT

4. The Commission should reject PacifiCorp's alleged "changed assumptions" it contends are beyond its control. PacifiCorp claims it cannot meet its interim targets for four reasons. First,

ATTORNEY GENERAL OF WASHINGTON
PUBLIC COUNSEL
800 5TH AVE., SUITE 2000
SEATTLE, WA 98104-3188
(206) 464-7744

PacifiCorp contends it failed to reach an agreement on a post-2020 replacement allocation methodology. Second, Washington's forecasted retail sales increased, but its forecasted load growth decreased relative to other states. Third, its actual procurement from its 2020 All Source RFP were lower than anticipated. Finally, it reallocated emitting resources to Washington lowering its interim targets. PacifiCorp's changed assumptions are irrelevant where the Company's planning was deficient from the start.

a. The Commission Should Disregard PacifiCorp's Excuses

5. PacifiCorp first raises a "WIJAM made me do it" defense. PacifiCorp has blamed WIJAM—and the WCA before it—for its planning failures since its inception. By all accounts, PacifiCorp has been dragging its feet in developing a successor to the 2020 protocol.[1] A replacement methodology is a factor within PacifiCorp's control. PacifiCorp terminated Framework Issues Working Group negotiations and has asked for an extension of the protocol in Oregon, Utah, and Wyoming.[2]

6. The allocation methodology is irrelevant in any event. The WIJAM is an *allocation methodology*, not a *procurement constraint*. The WIJAM simply allocates the costs and benefits of resources *shared* across PacifiCorp's six-state system. Its arithmetic does not prevent PacifiCorp from procuring long-term resources allocated solely to Washington and paid for by Washington ratepayers. The Commission recognized the irrelevance of WIJAM to PacifiCorp's long-term procurement in its 2022 Power Cost Adjustment Mechanism Order. In a direct warning to PacifiCorp, the Commission stated PacifiCorp already *should have* procured long-

[1] Robert L. Earle, Exh. RLE-1T at 18:16–19:2.
[2] *Id.*

ATTORNEY GENERAL OF WASHINGTON
PUBLIC COUNSEL
800 5TH AVE., SUITE 2000
SEATTLE, WA 98104-3188
(206) 464-7744

term resources for Washington.[3] Long-term, Washington-specific resource planning would have addressed both Washington's market exposure and PacifiCorp's ability to meet its CETA obligations.[4] Nothing about WIJAM prevents such procurements. Although PacifiCorp contends a situs procurement would raise incremental costs, it admits there would be substantial offsetting net power cost savings.[5]

7. In any event, PacifiCorp has not provided any supporting evidence of increased costs or difficulties of procuring situs resources and has not demonstrated the actual rate impact doing so.[6] Indeed, there are no practical difficulties in providing situs resources, as illustrated by PSE's Green Direct program, which allocates Washington sited resources to commercial customers. Customers in this program receive renewable energy from resources assigned to them, but which are still fully integrated into PSE's system.[7]

8. Second, PacifiCorp contends its updated retail sales and load forecast justifies its reduced interim targets. This excuse is indicative of unreasonable insistence on exclusively planning for its entire system rather than treating Washington as a special case in its planning. Sales and load forecasts are only relevant if PacifiCorp treats WIJAM as a constraint that must be followed at any cost. If PacifiCorp had procured long-term resources dedicated to Washington, changing sales and load would not affect its allocation to Washington.[8]

9. Next, PacifiCorp contends it incorporated its actual procurement, rather than its planned-

[3] *In re PacifiCorp 2022 Power Cost Adjustment Mechanism Annual Report*, Docket UE-230482, Order 07 ¶ 135 (Oct. 30, 2024).
[4] *Id.*
[5] Rohini Ghosh, TR. 285:24–286:9.
[6] *Id.*
[7] Earle, Exh. RLE-1T at 12:3–12; Matthew McVee, TR. 192:10–11 ("We can do situs resources.").
[8] Earle, Exh. RLE-1T at 17:1–11.

ATTORNEY GENERAL OF WASHINGTON
PUBLIC COUNSEL
800 5TH AVE., SUITE 2000
SEATTLE, WA 98104-3188
(206) 464-7744

for procurement from its 2020 ASRFP. PacifiCorp contends it acquired 1,000MW fewer resources than it planned in its Revised CEIP, thus lowering its interim targets.[9] PacifiCorp, however, acquired *system resources*, in a *system* RFP, in accordance with its *system* IRP. Commissioner Rendahl acknowledged the problem in this approach during the evidentiary hearing. In planning for the system, Washington's needs, both economic and environmental, get washed out.[10] PacifiCorp's 2020 RFP washed out the needs of Washington. PacifiCorp contends Public Counsel would have had PacifiCorp acquire more resources from the RFP at higher prices.[11] That has never been Public Counsel's position here. If resources would have imprudently increased costs, PacifiCorp should not have procured those resources. Here, however, PacifiCorp opted not to even engage in the analysis of evaluating additional resources from the RFP.[12] In doing so, PacifiCorp refused to consider the needs of its ratepayers and its Washington compliance obligations.

10. PacifiCorp's claim here is particularly troublesome because it admits increased long-term renewable procurement will offset Washington's net power costs.[13] Although PacifiCorp claims net power cost savings would be less-than the costs additional procurement, it did not provide that analysis, nor did it even complete one.[14]

11. Much of this is beside the point. The Commission has been concerned with PacifiCorp's long-term resource planning since at least 2011.[15] For at least as long, PacifiCorp has relied on

[9] PacifiCorp Post-Hearing Brief ¶ 51 (filed Nov 12, 2024).
[10] McVee, TR. 225:21–226:8.
[11] PacifiCorp Brief ¶ 63.
[12] Earle, TR. 356:12–17.
[13] Ghosh, TR. 285:24–286:9.
[14] *Id.*
[15] *In re Power & Light Co. Petition for Waiver from Certain Requests*, Docket UE-111418, Order 01 (Oct. 14, 2011).

ATTORNEY GENERAL OF WASHINGTON
PUBLIC COUNSEL
800 5TH AVE., SUITE 2000
SEATTLE, WA 98104-3188
(206) 464-7744

market purchases rather than procurement. CETA has changed the rules of the game. PacifiCorp's reduced interim targets, placing CETA compliance functionally out of reach, are the result of choices it made despite years of Commission warnings. The Commission cannot ignore PacifiCorp's profound failure to plan for Washington.

12. Finally, PacifiCorp contends it reduced its interim targets as a result of re-allocation of thermal resources to Washington, asserting this decision was supported by its 2023 general rate case. PacifiCorp's assumption regarding thermal resources is simply not credible for at least two reasons. First, PacifiCorp placed itself in the position of needing to re-allocate thermal, emitting resources to limit Washington's market exposure by failing to procure long-term resources in accordance with the Commission's decade plus of guidance urging PacifiCorp to do so. For example, in the Commission's 2021 Power Cost Only Rate Case Order, which the Commission issued after the passage of CETA, where the Commission pointedly reiterated its concerns with PacifiCorp's long-term resource portfolio and the potential effect on customers.[16] In short, had PacifiCorp planned sooner to limit Washington's market exposure using clean resources, it would not have needed to allocate an emitting resource to Washington resulting in a reduced interim target. Second, PacifiCorp has an obligation to comply with CETA's statutory duty regardless of the outcome of its rate proceedings. PacifiCorp has a statutory mandate to procure clean resources to meet the state's clean energy goals. The evidence shows PacifiCorp cannot reach that goal while maintaining Washington's substantial market exposure.

[16] *Wash. Utils & Transp. Comm'n v. PacifiCorp*, Docket UE-210402, Order 06 ¶ 402 ("the evidence in this case shows that the Company's continued reliance on market purchases has exposed Washington customers to significant price increases").

ATTORNEY GENERAL OF WASHINGTON
PUBLIC COUNSEL
800 5TH AVE., SUITE 2000
SEATTLE, WA 98104-3188
(206) 464-7744

b. PacifiCorp has not Provided the Commission with an Adequate Analysis

13. Ultimately, PacifiCorp's revised assumptions are irrelevant because PacifiCorp's planning failures are foundational. For over a decade, PacifiCorp has chosen to serve Washington with market transactions instead of long-term resources, defying the Commission's concerns. PacifiCorp's approach was never tenable, but is certainly cannot stand in light of CETA.

14. PacifiCorp has not presented the Commission sufficient evidence to approve its Biennial Clean Energy Implementation Plan (BCEIP). Throughout the proceeding, PacifiCorp has relied on the mantra that its BCEIP is the "least cost, least risk" plan. However, PacifiCorp fails to say whether its plan is the least cost for its *system* or the least cost for *Washington*. It has not provided an analysis of net power costs savings if it procured long-term resources for Washington, nor has it provided an analysis of the effect long-term procurement would have on rates. Without this evidence, the Commission should reject PacifiCorp's position.

III. PUBLIC COUNSEL IS RECOMMENDING A PENALTY, NOT A MANDATORY PROCUREMENT

15. Public Counsel does not advocate that PacifiCorp comply with CETA at any cost. Public Counsel does not expect PacifiCorp to go on a spending spree without considering the impact on rates. While advocating for rejection of the BCEIP, Public Counsel defers to the Commission's discretion to set interim targets that will not harm ratepayers. Public Counsel is mindful of Utilities and Transportation Staff's (Staff) proposed conditions, but notes that PacifiCorp has spent years ignoring the Commission when it comes to long-term resource procurement and has, instead, left Washington ratepayers vulnerable to expensive market purchases. PacifiCorp has

ATTORNEY GENERAL OF WASHINGTON
PUBLIC COUNSEL
800 5TH AVE., SUITE 2000
SEATTLE, WA 98104-3188
(206) 464-7744

not altered its resource planning despite the passage of CETA, which fundamentally changed PacifiCorp's planning environment. Ultimately, PacifiCorp would prefer to rely on the market rather than procure CETA resources when it admits situs renewables would shrink Washington's market exposure. Without a penalty, PacifiCorp has no incentive to comply with the law.

16. The Commission should end PacifiCorp's willful indifference to Washington's needs and Washington law and penalize it in the amount of $1,000 per day.

DATED this 27th day of November 2024.

ROBERT FERGUSON
Attorney General

Robert D Sykes

ROBERT D. SYKES, WSBA No. 49635
Assistant Attorney General

Attorney for Public Counsel Unit

Washington Attorney General's Office
Public Counsel Unit
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
Robert.Sykes@ATG.WA.GOV