

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PACIFICORP d/b/a PACIFIC POWER
AND LIGHT COMPANY,

Respondent.

DOCKET UE-210829

REPLY BRIEF OF COMMISSION STAFF

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I. INTRODUCTION

1 Staff requests that the Commission reject PacifiCorp’s Biennial Update, as it is a flawed document that is the product of improper modeling and years of poor decision-making by the Company. The evidence on the record illustrates how PacifiCorp’s own lack of resource acquisition management has led to this moment, and now it seeks to further procrastinate jeopardizing its ability to comply with the 2030 mandate. If the Commission does find that it is in the public interest to permit PacifiCorp to update its interim targets, Staff requests that the Commission order PacifiCorp to comply with the conditions in Staff’s testimony. Even with these conditions as guardrails, Staff remains concerned that the Company may not achieve the 2030 mandate under its current trajectory.

II. DISCUSSION

A. Reasonable Progress is Measured Through Interim Targets, and PacifiCorp’s Interim Targets Flatline in its Proposed Biennial Update

2 The Commission should ignore PacifiCorp’s assertion that it has made reasonable progress because of its system-wide resource acquisition. PacifiCorp’s interim targets are still a flat line indicating no progress, and under the WIJAM Washington sees only a fraction of any system renewable resource.

1. Legal standard.

3 Every four years, investor-owned utility (IOU) companies are required to submit to the Commission Clean Energy Implementation Plans (CEIP) that propose interim targets for meeting the 2030 and 2045 CETA mandates.¹ While IOUs historically provided the Commission and the public information on long-range planning through an Integrated Resource Plan (IRP), CETA—through CEIPs and the Clean Energy Action Plans (CEAP)—“requires a broader discussion of

¹ RCW 19.405.060(1)(a)(i)-(ii).

whether a utility is setting appropriate interim targets towards clean energy transformation standards[.]”² The CEIP must identify the specific actions pursued by the utility “that demonstrate progress toward meeting” CETA mandates.³ CETA lays out specific elements that need to be incorporated into the plan⁴ and Commission rules lay out specific guidelines for plan contents concerning (1) interim targets, (2) specific targets, (3) customer benefit data, (5) specific actions, (6) narrative description of specific actions, (7) projected incremental cost, (8) public participation, (9) alternative compliance (if applicable), and (10) early action coal credit (if applicable).⁵

4 Under Commission rules, the IOUs must develop interim targets in the CEIP that “[d]emonstrate how the utility will make reasonable progress toward meeting” the 2030 and 2045 CETA mandates.⁶ The interim targets must be consistent with WAC 480-100-610(4),⁷ which requires that each IOU, in making progress towards the 2030 and 2045 mandates, “[p]ursue all cost-effective, reliable, and feasible conservation and efficiency resources and demand response.”⁸ Put plainly, the interim targets must “demonstrate how the Company will make reasonable progress towards CETA’s clean energy requirements.”⁹ The Commission historically commends “aggressive but reasonable targets for achieving CETA’s clean energy standards” but the utility needs to provide details on how it plans to achieve those targets such as “*what* investments the Company intends to make, *where* those investments might be, and *who*

² *In the Matter of Puget Sound Energy Clean Energy Implementation Plan Pursuant to WAC 480-100-640*, Docket UE-210795, Order 08 at 6 ¶ 38 (Jun. 6, 2023).

³ RCW 19.405.060(1)(b)(iii).

⁴ RCW 19.405.060(1)(a)-(b).

⁵ WAC 480-100-640.

⁶ WAC 480-100-640(2)(a)(i).

⁷ WAC 480-100-640(2)(a)(ii).

⁸ WAC 480-100-610(4)(a).

⁹ *In the Matter of the Petition of Puget Sound Energy for an Order Adjusting Clean Energy Implementation Plan Annual Interim Targets for 2024 and 2025*, Docket UE-210795, Order 08 at 9 ¶ 48 (Sept. 27, 2024).

those investments might benefit[.]”¹⁰ The lack of specificity of these subjects necessitates a determination that the CEIP fails to comply with Washington law.¹¹

5 The Commission imposes a high bar for lowering interim targets, and it should maintain that bar here. Recently, Puget Sound Energy (PSE) filed a petition to lower its interim targets.¹² The Commission denied the petition.¹³ However, the reasoning for that denial is especially relevant here. In its order, the Commission reasoned that “keeping the targets in place provides incentives” for companies to make reasonable progress towards CETA mandates.¹⁴ The Commission clarified that it does not expect “rote adherence” with the targets, where, like in PSE’s case, such adherence could result in “unreasonably expensive short-term energy purchases.”¹⁵ In PSE’s case, the Commission’s analysis reflected the fact that PSE is making a “good faith effort[.] . . . to meet the interim targets.”¹⁶ The Commission based that determination on PSE’s acquisition of “more than 3,800 MW of name-plate capacity of CETA compliant resources,” which the Commission indicated likely showed “reasonable progress already made by PSE.”¹⁷

¹⁰ *In the Matter of the Petition of Puget Sound Energy for an Order Adjusting Clean Energy Implementation Plan Annual Interim Targets for 2024 and 2025*, Docket UE-210795, Order 08 at 6 ¶ 39-7 ¶ 40 (Sept. 27, 2024).

¹¹ *In the Matter of the Petition of Puget Sound Energy for an Order Adjusting Clean Energy Implementation Plan Annual Interim Targets for 2024 and 2025*, Docket UE-210795, Order 08 at 7 ¶ 40 (Sept. 27, 2024) (concluding the lack of specificity meant that PSE’s initial CEIP “fail[ed] to comply with Commission rules.”).

¹² *In the Matter of the Petition of Puget Sound Energy for an Order Adjusting Clean Energy Implementation Plan Annual Interim Targets for 2024 and 2025*, Docket UE-210795, Petition of Puget Sound Energy to Amend Orders 08 and 12 and Adjust PSE’s Clean Energy Implementation Plan Annual Interim Targets for 2024 and 2025 (Sept. 27, 2024).

¹³ *In the Matter of Puget Sound Energy’s Clean Energy Implementation Plan Pursuant to WAC 480-100-640*, Docket UE-210795, Order 14 at 6 ¶ 17 (Nov. 8, 2024).

¹⁴ *In the Matter of Puget Sound Energy’s Clean Energy Implementation Plan Pursuant to WAC 480-100-640*, Docket UE-210795, Order 14 at 4 ¶ 10 (Nov. 8, 2024).

¹⁵ *In the Matter of Puget Sound Energy’s Clean Energy Implementation Plan Pursuant to WAC 480-100-640*, Docket UE-210795, Order 14 at 3 ¶ 10 (Nov. 8, 2024).

¹⁶ *In the Matter of Puget Sound Energy’s Clean Energy Implementation Plan Pursuant to WAC 480-100-640*, Docket UE-210795, Order 14 at 4 ¶ 10 (Nov. 8, 2024).

¹⁷ *In the Matter of Puget Sound Energy’s Clean Energy Implementation Plan Pursuant to WAC 480-100-640*, Docket UE-210795, Order 14 at 4 ¶ 11 (Nov. 8, 2024).

2. PacifiCorp's Biennial Update does not demonstrate progress.

6 The Commission should reject PacifiCorp's argument that it has made reasonable progress based on its acquisition of 2,600 MWs of CETA compliant *system* resources that will come online in 2026.¹⁸ As discussed below, the interim targets are the measure of progress. But it is important to address that in its statement concerning this 2,600 MW acquisition PacifiCorp conveniently leaves out the fact that under the WIJAM Washington will only see approximately eight percent of this acquisition, roughly 208 MW of generation. Even after that, by PacifiCorp's own admission, it acknowledges that according to its Biennial Update Washington is still short an additional 240 MWs of CETA-compliant resources.¹⁹ PacifiCorp saying it "only" needs 240 MWs of resources is concerning, as the Company is notorious for leaving Washington in a persistent short position with over-reliance on market power to make up the difference.²⁰ Finally, PacifiCorp does not get to attribute the generation it acquires and uses to supply power to other states for its CETA compliance in Washington.

7 Even more importantly, *the proposed interim targets in the Biennial Update are not indicative of progress*. The proposed Biennial Update leaves PacifiCorp's interim targets in a flat line through 2025 and only slightly inclined until 2028. And things get no better after 2028. PacifiCorp offers no explanation in the Biennial Update on how PacifiCorp plans to make a drastic leap in interim targets between 2029 and 2030. PacifiCorp reiterates in its brief its plan to

¹⁸ *Wash. Utils. & Transp. Comm'n v. PacifiCorp d/b/a Pac. Power & Light Co.*, Docket UE-210829, PacifiCorp Initial Brief at 3 ¶ 6 (Nov. 12, 2024).

¹⁹ Ghosh, Exh. RG-1T at 21.

²⁰ *Wash. Utils. & Transp. Comm'n v. PacifiCorp d/b/a Pac. Power & Light Co.*, Docket UE-230482, Earle, Exh. RLE-7CT at 6:1-19 (May 2, 2024); *Wash. Utils. & Transp. Comm'n v. PacifiCorp d/b/a Pac. Power & Light Co.*, Docket UE-230482, Mullins, Exh. BGM-1Tr at 4:9-13 (Apr. 5, 2024); *Wash. Utils. & Transp. Comm'n v. PacifiCorp d/b/a Pac. Power & Light Co.*, Docket UE-230482, Wilson, Exh. JDW-1CT at 16:5-17:2; 30:14-16; 34:8-14 (Mar. 28, 2024) (discussing Washington's short position as compared to PacifiCorp's system position).

rely on Sodium and other “developing technologies”²¹ that have not entered the market, and it remains unclear when, or if, they will. This flies in the face of the Commission’s remarks in Order 08 of Docket UE-210795:²² there is no description of concrete obtainable resources in the Biennial Update, just the reliance on things that may be available in the future if the technology develops enough to be operational.

8 PacifiCorp is right, but not in the sense it intends, when it says that “[f]rom an evidentiary perspective, this case is routine.”²³ Anyone looking at PacifiCorp’s interim targets in its proposed Biennial Update can see the utility is not making progress toward the 2030 CETA mandate.²⁴ If 2030 is the summit of a mountain, PacifiCorp’s proposed 2022-2025 interim targets are a flat trail wandering its base. You cannot climb a mountain without gaining elevation, and there is no elevation gain in PacifiCorp’s Biennial Update. Even in the first two years of the next CEIP, PacifiCorp projects making little progress in its interim targets. Yet, it claims that it will go from serving its retail load with barely 40 percent renewable non-emitting generation to 82 percent in just three years.²⁵ PacifiCorp has not laid out a detailed procurement plan, and made no indication that it will assign more system renewable, non-emitting generation

²¹ *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pac. Power & Light Co.*, Docket UE-210829, PacifiCorp Initial Brief at 3 ¶ 9 (Nov. 12, 2024).

²² *In the Matter of the Petition of Puget Sound Energy for an Order Adjusting Clean Energy Implementation Plan Annual Interim Targets for 2024 and 2025*, Docket UE-210795, Order 08 at 6 ¶ 39-7 ¶ 40 (Sept. 27, 2024) (discussing PSE’s broad plan for clean energy investments over the course of the plan and the lack of detail associated with those plans) (This discussion was focused on the plan immediately before the Commission, not a Biennial Update or the next CEIP. The criticism is even more relevant here, since PacifiCorp is attempting to update its targets now on the promise of more action in the future, but that action is so nebulous that Staff cannot confidently say it is a plan that will lead to compliance).

²³ *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pac. Power & Light Co.*, Docket UE-210829, PacifiCorp Initial Brief at 1 ¶ 2 (Nov. 12, 2024).

²⁴ *In the Matter of PacifiCorp’s 2021 Clean Energy Implementation Plan (CEIP)*, Docket UE-210829, Clean Energy Implementation Plan Biennial Report, Exh. PAC-1 at 8 (Nov. 1, 2023).

²⁵ *In the Matter of PacifiCorp’s 2021 Clean Energy Implementation Plan (CEIP)*, Docket UE-210829, Clean Energy Implementation Plan Biennial Report, Exh. PAC-1 at 8 (Nov. 1, 2023).

to Washington, yet it asks the Commission to just trust its promise that it will accomplish in three years double what it projects doing in the first six years of CETA work.

9 Permitting PacifiCorp to revise its interim proposed targets as proposed would violate state law, Commission rule, and Commission precedent. It would permit PacifiCorp to stagnate when every authority requires it to progress. The Commission should decline to grant the Company’s requested revision.

B. Staff’s Concerns Over PacifiCorp’s use of Thermal Resources are not Moot, as Approval of a Resource in a GRC Does not Support Failure to Comply With Washington Law Under a Planning Statute

10 That thermal resources currently serve Washington customers, and that Staff supports inclusion of those resources in rates in a GRC settlement, do not moot the issue of compliance with CETA and adequate resource acquisition of CETA-compliant resources. Nor does it moot Staff’s concerns about use of thermal resources in planning for the 2030 mandate.

1. Legal standard.

11 An issue is moot if “it involves only abstract propositions or questions, the substantial questions in the trial court no longer exist, or a court can no longer provide effective relief.”²⁶ The issue must be a “real and substantial controversy” that can be resolved through specific relief as opposed to an “opinion advising what the law would be upon a hypothetical set of facts.”²⁷ A case can become moot through an act of a party or a subsequent law that brings the controversy to an end.²⁸ A case is not moot if it is “capable of repetition yet evading review.”²⁹

²⁶ *Spokane Rsch. & Def. Fund v. City of Spokane*, 155 Wash.2d 89, 99, 117 P.3d 1117 (2005).

²⁷ *Wash. State Comm’n Access Project v. Regal Cinemas, Inc.*, 173 Wash. App. 174, 203, 293 P.3d 413 (2013) (internal citations omitted).

²⁸ *U.S. v. Alaska S.S. Co.*, 253 U.S. 113, 116 (1920).

²⁹ *S. Pac. Terminal Co. v. Interstate Com. Comm’n*, 219 U.S. 498, 515 (1911).

2. Approval of a resource in a GRC does not excuse failure to plan to comply with a clean energy planning statute.

12 First and foremost, PacifiCorp's thermal assumptions in its Biennial Update are not solely relegated to extension of Colstrip and Jim Bridger, as Mr. McVee testified that stay of the Ozone Transport Rule (OTR) was a factor impacting PacifiCorp's *system* that formed at least part of the basis for its thermal revisions.³⁰ To be clear, the stay of OTR was not a rule requiring use of thermal assets, it is instead the pause of the rule, for certain states, that limits fossil fuel emissions across state lines.³¹ PacifiCorp changed resource assumptions by choice, it was not ordered to do so. Even if the challenge to the OTR were ruled on tomorrow, this is clearly an issue capable of repetition as federal, and indeed state, rules are challenged frequently. If PacifiCorp chooses to alter resource planning during the stay of every rule challenged to the detriment of Washington, such making should be closely scrutinized.

13 PacifiCorp has repeatedly included factors in its CETA planning prior to Commission ruling, anticipating outcomes to Commission orders prior to those orders being issued. PacifiCorp needs to follow Commission law, including prior orders, and cannot be planning based on amendments to prior orders being approved in the future. If something requires Commission order to use, PacifiCorp needs to wait for that order to incorporate it into planning assumptions. For example, PacifiCorp's inclusion of coal units at Jim Bridger and Colstrip in its Biennial Update. These resources were incorporated long before the Commission approved³² the

³⁰ McVee, TR. 232:10-233:7; McVee, Exh. MDM-10X.

³¹ U.S. Environmental Protection Agency, EPA Response to Judicial Stay Orders, <https://www.epa.gov/Cross-State-Air-Pollution/epa-response-judicial-stay-orders> (last visited Nov. 19, 2024).

³² In PacifiCorp's 2019 GRC, the GRC preceding the 2023 GRC, the Commission approved accelerated depreciation, by December 31, 2023, of Colstrip Unit 4 and Jim Bridger coal-fired units. *Wash. Utils. & Transp. Comm'n v. PacifiCorp d/b/a Pac. Power & Light Co.*, Docket Nos. UE-191024, UE-190750, UE-190929, UE-190981, UE-180778, Final Order 09/07/12 at 45 ¶¶ 112-13 (Dec. 14, 2020). As a result of this order, PacifiCorp needed to obtain Commission permission through a subsequent order to extend out the lives of these units, which is what it sought, and was ultimately granted permission, to do in UE-230172. Staff does not object to PacifiCorp

settlement in Docket UE-230172, bestowing an air of déjà vu as PacifiCorp also prematurely included a new allocation methodology when it filed its 2021 CEIP. The only difference between that instance and now is that the Commission approved the settlement. If it had not, or if it had adjusted the terms concerning thermal resources, PacifiCorp’s Biennial Update would be facing similar problems as the 2021 CEIP with the unapproved methodology. Not only is this issue capable of repetition, it has already been repeated in this very docket.

14 Additionally, a resource’s disposition in a GRC is separate from modeling for compliance with a clean energy planning statute when the utility knows the thermal resource is not compliant with green energy transition mandates. Staff supporting use of a resource in one case is separate from Staff’s concerns in a planning docket where the utility is failing in its trajectory to comply with state law. Extension of Colstrip and Jim Bridger coal units for short-term rate reasons does not eliminate the need to acquire CETA-compliant resources for long-term compliance with a statute, especially as PacifiCorp operates Washington on a short. This is a concrete and current issue as PacifiCorp is improperly weighting its model in a way that already discourages renewable investment.³³

C. The Substantial Evidence Standard Does not Support Updating the CEIP, and Approving the Biennial Update Would be Arbitrary and Capricious

1. Legal standard.

15 The Commission is tasked with “regulat[ing] in the public interest . . . all persons engaging within this state in the business of supplying any utility service or commodity to the

incorporating resources approved by the Commission, Staff’s concern is the use of, e.g. a resource, that PacifiCorp was previously ordered to remove from rates within months of when the Biennial Update was submitted. If the Commission had not approved extension of the lives of these resources in UE-230172, then PacifiCorp Biennial Update would contain yet another flaw.

³³ See *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pac. Power & Light Co.*, Docket UE-210829, Staff Initial Brief at Section III.D (Nov. 12, 2024).

public for compensation.”³⁴ In enacting CETA, the legislature recognized the Commission’s “statutory grant of authority” to use tools such as regulatory mechanisms to achieve CETA’s public interest objectives.³⁵

16 PacifiCorp has argued that the Commission should approve the Biennial Update because that decision is supported by substantial evidence. Courts overrule state agency orders that are “arbitrary and capricious.”³⁶ Agency actions are arbitrary and capricious if they are “willful and unreasoning and taken without regard to the attending facts or circumstances.”³⁷ Where the evidence leaves “room for two opinions” an action is not arbitrary and capricious, even if one party believes an erroneous conclusion is reached.³⁸ An “honest difference of opinion” is not reason to overrule an agency finding.³⁹ Indeed, an agency is empowered to exercise the discretion placed upon it by the legislature.⁴⁰ A decision supported by substantial evidence is not arbitrary and capricious.⁴¹ Substantial evidence is “evidence in sufficient quantum to persuade a fair-minded person of the truth” of what is being asserted.⁴² The substantial evidence standard is a standard applied by appellate courts in review of agency decisions.⁴³

2. The Commission is tasked with making decisions in the public interest; the substantial evidence standard is a standard of review.

17 The question in this case is whether the Biennial Update is in the public interest, and it is not. The Commission should reject PacifiCorp’s argument that the Commission must permit the

³⁴ RCW 80.01.040(3).

³⁵ RCW 19.405.010(5).

³⁶ RCW 34.05.570(3)(h)(i).

³⁷ *Honeywell v. Wash. State Dep’t of Ecology*, 2 Wash. App. 2d 601, 611, 413 P.3d 41 (2017) (quoting *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wash.2d 568, 589, 90 P.3d 659 (2004)) (internal quotations omitted).

³⁸ *Pierce Cnty. Sheriff v. Civ. Serv. Comm’n of Pierce Cnty.*, 98 Wash.2d 690, 695, 658, P.2d 648 (1983).

³⁹ *State v. Rowe*, 93 Wash.2d 277, 284, 609 P.2d 1348 (1980).

⁴⁰ RCW 34.05.574(1).

⁴¹ *Callecod v. Wash. State Patrol*, 84 Wash. App. 663, 676, 929 P.2d 510 (1997).

⁴² *In re Elec. Lightwave, Inc.*, 123 Wash.2d 530, 543, 869 P.2d 1045 (1994).

⁴³ *City of Seattle, Seattle Police Dep’t v. Werner*, 163 Wash. App. 899, 907, 261 P.3d 218 (2011).

Biennial Update because of substantial evidence, as that is the wrong standard. A decision to allow the Biennial Update would be an exercise of the Commission's discretion, and exercise of that discretion is what is subject to arbitrary and capricious review, if appealed. The record before the Commission does not support a determination that adjusting the interim targets is in the public interest, as the Biennial Update jeopardizes the Company's compliance with Washington law. The Update does not make progress on CETA requirements and leaves more room for uncertainty about PacifiCorp's procurement plans and ability. These outcomes cannot result in a determination that the Biennial Update is in the public interest. As such, the public interest weighs in favor of rejecting the Biennial Update. It would be definitionally arbitrary and capricious to approve an Update contrary to law and not in the public interest.

3. PacifiCorp's NREL adjustment is supported by conclusory statements that contradict positions it has taken in other proceedings.

18 Staff's main concern about PacifiCorp's NREL ATB adjustment, whereby the Company used RFP bids to adjust modeling assumptions, is not solely, as PacifiCorp wrongly alleges, the very small sample size upon which it bases the adjustment, but the fact that no other comparable Washington IOU, and according to testimony from RNW, peer Oregon IOU or the CPUC,⁴⁴ made these adjustments. PacifiCorp stands on its own in this supposed "necessary" price inflation that disadvantages renewables in its IRP for nearly 10 years. It provides no support for hardcoding this decision into the next 10 years of modeling other than one year of revised bids during a rare economic event. To be clear, even if PacifiCorp had a larger sample size of bids from 2020 upon which this adder was based, Staff would be skeptical of the benefits of such adder, since no other utility viewed this as a necessary action. Additionally, PacifiCorp claims that the adjustment was necessary to reflect actual bid prices it was receiving; however, it had the

⁴⁴ Ware, Exh. KW-1T at 7:1-2.

opportunity to obtain updated bid pricing information in 2022 but cancelled the 2022 AS RFP before it even had a shortlist of bids.

19 PacifiCorp raves about its multi-state system’s ability to gain access to resources across a large geographic footprint,⁴⁵ yet over the span of over a decade it has not made any effort to procure resources to close Washington’s open position or to adequately acquire resources for CETA, a legal obligation it has been aware of for nearly five years. PacifiCorp’s actions are not those of a utility truly trying to model real-world prices, these are the actions of a utility trying to avoid resource acquisition. PacifiCorp has provided zero evidence other than conclusory statements that costs for renewables will substantially decrease as 2030 draws closer. In reality, the NREL forecast illustrates solar slightly increasing, but largely staying the same, and wind modestly decreasing over the rest of the decade.⁴⁶ Substantial evidence weighs against PacifiCorp’s “wait and see” approach.

4. There is substantial evidence that PacifiCorp does not plan to procure.

20 PacifiCorp’s assertions about “substantial evidence” fail to take into account all the evidence of PacifiCorp’s long-standing failures to acquire resources over the years that led to this point, and its own choices that have landed it in this spot. The Commission should disregard PacifiCorp’s argument that its update should be approved because it follows WIJAM, incorporates thermals, and includes other inputs it claims other parties “don’t contest.” Staff’s concern is PacifiCorp’s stalled progress and uncertain trajectory to CETA compliance under its proposed Biennial Update. PacifiCorp is well-aware of the 2030 deadline, yet it made, and is making, choices that are setting it up for failure, and approving a reduction in targets just enables that behavior.

⁴⁵ McVee, TR. 159:13-160:4.

⁴⁶ Ghosh, Exh. RG-21XC.

21 The only substantial evidence in the record is substantial evidence of PacifiCorp’s own poor decisions. The Commission should not set a precedent allowing companies to dictate whether or not they comply with state law. Permitting this Biennial Update will have that effect as, in the context of CETA, it will allow a company to set a benchmark, do very little or no work in progressing towards that benchmark, and then avoiding potential regulatory accountability by requesting that benchmark be moved prior to a regulatory deadline. Such an argument is a perversion of the rule of law and authority bestowed on state agencies, in this case the Commission, to regulate.

22 The Commission should ignore PacifiCorp’s assertions that the Commission must grant PacifiCorp’s update because of the “substantial evidence” the Company offers. PacifiCorp’s use of WIJAM, integration of thermal assets, cancellation of its RFP, and resource acquisition failure are all factors PacifiCorp had control over and chose to avoid addressing until the point when it realized it was too late. The real substantial evidence in this case is the numerous warnings by the Commission, as recently as the Commission’s order in the Company’s 2022 PCAM, that the Company needs to procure with Washington ratepayers and Washington law in mind.⁴⁷

23 As laid out in exhibits, at the hearing, and in Staff’s initial post-hearing brief,⁴⁸ PacifiCorp’s actions and statements provide ample evidence that it intends to avoid resource acquisition. Without resource acquisition, or a significantly revised system allocation methodology, PacifiCorp cannot hope to meet the 2030 mandate. Continued reliance on the short-term power market is not the answer, despite PacifiCorp’s continued use of that resource as a crutch to fix its deficiencies.

⁴⁷ *In the Matter of the Petition of PacifiCorp d/b/a Pac. Power & Light Co. 2022 Power Cost Adjustment Mechanism Annual Report*, Docket UE-230482, Order 07 at 33 ¶ 125-26 (Oct. 30, 2024).

⁴⁸ See Section III.B.

24 Even if the Commission finds it appropriate to permit some adjustment to the targets based on PacifiCorp’s “evidence,” that should be checked by Staff’s conditions. Staff’s proposed conditions provide some guardrails, forcing the Company to actually work towards compliance and not just maintain the status quo. Staff contends that the evidence points to denial of the Biennial Update, and that it is a willful disregard of the evidence presented in this proceeding to permit the Company to update its interim targets.

D. PacifiCorp’s Continual Incorrect Phrasing Of CETA Standards Indicates it is not Planning With CETA in Mind

25 CETA requires that utilities “[a]chieve targets at the lowest reasonable cost, considering risk.”⁴⁹ “Lowest reasonable cost” is defined by the Commission in rules.⁵⁰

26 PacifiCorp’s failure to properly state the standard and flip flop between multiple ill-defined terms that have little nexus to CETA or Commission rules further highlights Staff’s concerns about PacifiCorp’s sincerity in claims for future procurement and CETA compliance. In brief, PacifiCorp states it must comply with CETA at “the lowest reasonable cost, *after* considering risk.”⁵¹ This is an altered phrase from what is mandated by CETA that PacifiCorp has introduced for the first time in its post-hearing brief. Prior to this, PacifiCorp reiterated its adherence to a “least cost, least risk”⁵² standard, a standard Staff expressed concern about in its post-hearing brief.⁵³ There is a lack of transparency in what “risk” is being considered and how that risk is being quantified and incorporated into judgment calls. Staff reiterates its concerns

⁴⁹ RCW 19.405.040(6)(a)(i).

⁵⁰ WAC 480-100-605.

⁵¹ See e.g. *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pac. Power & Light Co.*, Docket UE-210829, PacifiCorp Initial Brief at 1 ¶ 2; 8 ¶ 22; 8 ¶ 23 (Nov. 12, 2024).

⁵² McVee, Exh. MDM-2T at 2:19-20; 6:5-6; 6:20-21; 16:6-7; 24:9-10; 26:17-18; Ghosh, Exh. RG-2T at 9:19-20; 10:6-7; 15:18-19; 17:6-8.

⁵³ See *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pac. Power & Light Co.*, Docket UE-210829, Staff Initial Brief at Section B(6) (Nov. 12, 2024).

stated in its initial brief⁵⁴ as PacifiCorp does not seem to be performing a cost-risk analysis on the basis of Commission rules and CETA, but rather on some other set of factors and parameters Staff is not privy to.

E. The Commission Should not Adopt AWEC’s Reasoning Supporting the Interim Target Update in the Biennial Update

27 AWEC’s recommendations fail to take into account that PacifiCorp’s situation today is the product of its long-term failures. AWEC’s argument makes the same fatal flaw as PacifiCorp’s: since the Company has stated these factors exist, it should be permitted to update its targets. But at least some of these factors, such as change in the allocation methodology, thermal resource assumptions, cancellation of the 2022 AS RFP, and long-term resource acquisition failures, are the result of PacifiCorp’s choices. The Commission should not allow a utility to update its CEIP so it can avoid potential legal repercussions resulting from its own decision-making.⁵⁵ AWEC’s argument that the “reality of the situation . . . [is that] it is highly unlikely”⁵⁶ PacifiCorp can acquire long-term resources to meet its currently approved target highlights this point. As Mr. McVee testified at hearing that PacifiCorp, if its update is denied, will have to “go out and *start*” purchasing resources.⁵⁷ Even though the 2021 interim targets are the currently approved targets, PacifiCorp does not seem to be working towards achieving those during the pendency of this matter, even though those are the targets it will be required to meet if its update is not approved. PacifiCorp is making choices, and its Biennial Update is its effort to

⁵⁴ *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pac. Power & Light Co.*, Docket UE-210829, Staff Initial Brief Section at B(6) (Nov. 12, 2024).

⁵⁵ Staff is concerned that if PacifiCorp is substantially behind in 2030, it will attempt to avoid the greenhouse gas neutrality mandate through the 2 percent incremental cost pathway outlined in RCW 19.405.060(3).

⁵⁶ *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pac. Power & Light Co.*, Docket UE-210829, AWEC Initial Brief (Errata) at 5 ¶ 10 (Nov. 14, 2024).

⁵⁷ McVee, TR. 244:11-12 (emphasis added).

avoid responsibility for those choices. Allowing PacifiCorp to update its targets based on factors of largely its own creation only incentivizes the utility to continue this behavior in the future.

1. AWEC’s interpretation of Order 14 in Docket UE-210795 is erroneous.

28 AWEC’s reference to the Commission’s recent decision in Docket UE-210795 misses the point of that ruling. The Commission reiterated in that docket that it does not expect “imprudent spending” and pointed PSE to “prior orders regarding CETA compliance and reasonable utility practices and management.”⁵⁸ PacifiCorp needs to behave prudently, and that is part of Staff’s concern in this matter, that PacifiCorp has not been planning for procurement in a manner than lends itself towards prudence.

29 AWEC contradicts its own argument later in its brief: “[i]f 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.”⁵⁹ There will be nothing to review if the Commission approves the Biennial Update because PacifiCorp will continue to operate business as usual until the 2030 mandate compels immediate action. At that point, it will be too late. Any concerns AWEC currently harbors about the “what ifs” PacifiCorp may do if its Biennial Update is rejected are premature at this point. AWEC, just like Staff or any other party, is able to challenge the prudence of any acquisition decision PacifiCorp does or does not make when that decision is reviewed in an appropriate proceeding. But those conversations can only happen if PacifiCorp makes the effort to comply with the law rather than seek what are essentially exemptions from it.

⁵⁸ *In the Matter of Puget Sound Energy’s Clean Energy Implementation Plan Pursuant to WAC 480-100-640*, Docket UE-210795, Order 14 at 4 ¶ 11 (Nov. 8, 2024).

⁵⁹ *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pac. Power & Light Co.*, Docket UE-210829, AWEC Initial Brief (Errata) at 8 ¶ 14 (Nov. 14, 2024).

30 Staff’s primary and secondary recommendations are designed to ensure that PacifiCorp is forced to think about procurement in a way that gives it the best shot at obtaining resources prudently. If PacifiCorp is repeatedly allowed to lower its targets when it does not properly plan for procurement, it will never procure. If it does not procure, then it will be in this exact position again, but it will be 2031, and the Company will be arguing that resources were just too expensive to obtain in 2028 and 2029.

2. Condition 2 just requires certain parameters on what PacifiCorp is already ordered to do under Order 07 in Docket UE-230482.

31 Imposing Staff’s condition 2 does not result in a pre-determination of outcomes. The condition requires PacifiCorp to submit options for a new methodology for review in a GRC. Staff anticipates those options then being reviewed with the same rigor and analysis as any other proposal submitted by a company during a GRC. The condition does not require the Commission to approve any proposal. Additionally, the Commission has already ordered PacifiCorp “to provide justification for its continued reliance on the WIJAM as well as an alternative allocation methodology.”⁶⁰ Condition 2 does nothing more than expand and provide further requirements on what the Commission has already ordered.

3. Condition 5 does not ask the Commission to order procurement and does not exceed Commission authority.

32 The Legislature empowered the Commission to regulate “in the public interest.”⁶¹ The Commission is empowered to “order such improvement . . . in the manufacture, transmission or supply of electricity . . . or in the methods employed . . . as will in its judgment be efficient, adequate, just and reasonable.”⁶² For instance, the Commission employed this authority in

⁶⁰ *In the Matter of the Petition of PacifiCorp d/b/a Pac. Power & Light Co. 2022 Power Cost Adjustment Mechanism Annual Report*, Docket UE-230482, Order 07 at 1 (Oct. 30, 2024).

⁶¹ RCW 80.01.040(3).

⁶² RCW 80.28.030(1).

ordering a water company to improve its water quality to comply with state water quality standards.⁶³ Indeed, the legislature encourages “actions and incentives by state government to promote . . . use of renewable resources,” and that Washington is well-served by “a reliable supply of energy based upon renewable energy resources.”⁶⁴

33 Staff’s proposed condition 5 does not exceed the Commission’s authority and merely serves as a guardrail, not a mandate to procure. Condition 5 requires PacifiCorp to continually consider bids for potential procurement, it does not force the Company to enter into any contract. Procurement decisions are still left at the business discretion of the utility. The purpose of Staff’s condition is to ensure that PacifiCorp continues to review bids in an effort to increase the likelihood of receiving bids that lead to contracts for prudent procurement. In the event the Commission permits the Company to update its interim targets, it is in the public’s interest that PacifiCorp be required to continually consider resource bids. PacifiCorp has demonstrated its hesitancy to engage in procurement and spoke extensively about bids backing out or re-pricing in 2022.⁶⁵ This condition provides some level of guarantee that PacifiCorp cannot cancel an RFP prematurely and must consider bids for long-term planning.

4. Condition 6 is supported by the evidence in the record and is in the public interest.

34 Substantial evidence is “evidence in sufficient quantum to persuade a fair-minded person of the truth” of what is being asserted.⁶⁶ Imposing condition 6, requiring PacifiCorp to commit to a 73 percent interim target, is supported by the evidence on the record and in the public interest. As noted multiple times throughout this proceeding, PacifiCorp’s proposed revised interim

⁶³ *Sarah Hand v. Rainier View Water Company, Inc.*, Docket UW-170924, Order 03 at 1 (Dec. 18, 2018).

⁶⁴ RCW 80.28.024.

⁶⁵ Ghosh, TR. 254:9-23.

⁶⁶ *In re Elec. Lightwave, Inc.*, 123 Wash.2d 530, 543, 869 P.2d 1045 (1994).

targets are based on modeling that inflated the price of renewable, non-emitting generation based on a limited number of RFP bids. As a result, the modeling for those proposed targets is likely flawed in at least one way. AWEC and PacifiCorp have both referred to substantial evidence, but here PacifiCorp provides only skewed evidence to support its update. While PacifiCorp states the interim targets in the Biennial Update are based on more current information, the Update does not account for any new resources, or new prices, that could have been obtained in the 2022 AS RFP. This is for the plain reason that PacifiCorp canceled the 2022 AS RFP before it could even obtain a shortlist of potential bidders. Any “truth” in PacifiCorp’s updated modeling is so muddled and buried underneath cherry-picked inputs to the baseline pricing renewables that its veracity cannot be relied upon. PacifiCorp’s Biennial Update is flawed in multiple ways, and it is most definitely not a Biennial Update that is supported by substantial evidence.

35 Additionally, condition 6 is in the public interest because it ensures that PacifiCorp continues to appropriately plan for procurement throughout the CEIP process, rather than reserve all procurement for the final two to three years before the 2030 deadline. Requiring a 73 percent interim target in 2029 means that PacifiCorp only needs to achieve 7 percent more to reach the required 80 percent in 2030. This is much more reasonable than hoping PacifiCorp can achieve 18 percent in the course of a year, especially given its slow trajectory thus far. Condition 6 is appropriate, supported by evidence in the record, and in the public interest.

5. Condition 7 is an appropriate term to ensure that CETA’s equity mandates are being pursued.

36 The legislature intended that Washington’s green energy transition to be equitable and reduce “burdens to vulnerable populations and highly impacted communities.”⁶⁷ CETA mandates that an IOU “ensure that all customers are benefitting from the transition to clean

⁶⁷ RCW 19.405.011(6).

energy.”⁶⁸ This requirement includes the equitable distribution of energy and non-energy benefits and reducing impacts to vulnerable populations and highly impacted communities.⁶⁹ In the order approving PSE’s 2021 CEIP, the Commission ordered a minimum designation of 30 percent of PSE’s DER, DR, and EE programs, given the proportion of PSE customers in Named Communities.⁷⁰ The Commission reasoned that “modest spending designations” were not sufficient to address equity.⁷¹

37 Condition 7 is designed to promote behaviors that comply with the equity mandate in CETA. If this condition is ordered, Staff encourages PacifiCorp to work with its advisory groups, as well as appropriate tribal governments and entities, to define benefits and how they flow to these communities. This is similar to the condition agreed to in the PSE settlement, and ordered by the Commission in Order 08.⁷² As such, Staff encourages PacifiCorp to reach out to PSE to understand how PSE collaborates with its advisory groups to define benefits and how they flow to communities. For example, if MWhs are saved, how those savings are flowing to named communities. This could, e.g., be in the form of discounts or another benefit. PSE is currently working on these issues and has valuable insight on navigating this process. The point of this condition is for PacifiCorp to work with its advisory groups, to determine how benefits are defined, and how they flow to named communities. Advisory group meetings are open and inclusive. Any interested person can request to be on the mailing list for the advisory group. If AWEC wishes to be involved in discussions around defining benefits and the process of how

⁶⁸ RCW 19.405.040(8).

⁶⁹ RCW 19.405.040(8).

⁷⁰ *In the Matter of Puget Sound Energy Clean Energy Implementation Plan Pursuant to WAC 480-100-640*, Docket UE-210795, Order 08 at 74 ¶ 275-76; 75 ¶ 278 (Jun. 6, 2023).

⁷¹ *In the Matter of Puget Sound Energy Clean Energy Implementation Plan Pursuant to WAC 480-100-640*, Docket UE-210795, Order 08 at 74 ¶ 275 (Jun. 6, 2023).

⁷² *In the Matter of Puget Sound Energy Clean Energy Implementation Plan Pursuant to WAC 480-100-640*, Docket UE-210795, Order 08 at 75 ¶ 278 (Jun. 6, 2023).

they flow to communities, it can be added to the mailing list and participate in those discussions as it sees fit.

III. CONCLUSION

38 Staff respectfully requests that the Commission reject PacifiCorp's Biennial Update to its 2021 CEIP. The Biennial Update does not show progress as required by CETA, and gravely jeopardizes PacifiCorp's ability to meet its 2030 compliance requirements. If the Commission chooses to allow the interim targets to be updated, Staff requests that the Commission impose Staff's eight conditions to provide minimal assurances that PacifiCorp will make progress in what is left of the decade before the 2030 mandate deadline. Staff remains very concerned about PacifiCorp's ability to comply with CETA under the Biennial Update given the Company's demonstrated aversion to resource procurement for Washington and is not convinced that the Biennial Update is in the public interest.

Respectfully submitted this 27th day of November, 2024.

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