BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT COMPANY, Respondent.	Docket UE-220376 PACIFICORP MOTION TO DISMISS

1 PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp or the Company) respectfully requests the Washington Utilities and Transportation Commission (Commission) exercise its broad discretion and dismiss the Staff Complaint issued to PacifiCorp on June 6, 2022 (Complaint).

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I. Introduction

2 Washington passed the ambitious Clean Energy Transformation Act (CETA) in 2019.[1] PacifiCorp supported the transformative law, and is on path to acquire 20,000 megawatts of renewable, non-emitting, and energy efficiency resources, partly to meet CETA's ambitious decarbonization targets.

3 To that end PacifiCorp has diligently collaborated with Staff over the past three years, including bi-monthly discussions throughout 2022, on the Company's 2021 Integrated Resource Procurement Plan (IRP) and Clean Energy Implementation Plan (CEIP). PacifiCorp is also currently responding to stakeholder comments submitted in the CEIP docket and will continue to work with the Commission over the coming years in its steady and reasoned implementation of CETA.

4 Despite these good faith efforts, Staff alleges that PacifiCorp incorrectly modeled the social cost of greenhouse gases (SCGHGs) in its 2021 CEIP. The Company respectfully disagrees. PacifiCorp correctly accounted for the SCGHG for all resources that are allocated to Washington-jurisdictional customers. Staff admitted as much when it acknowledged that the Company's CEIP "*may*" have correctly modeled the SCGHG.[2]

5 Before addressing the merits of the SCGHG issue, however, the Commission must determine whether the Complaint adequately states a claim upon which relief can be granted, or whether PacifiCorp is entitled for judgment on the pleadings. As argued below, the Complaint is subject to at least two interpretations that require dismissal, and both have the same procedural due process defects.

[1] E2SSB 5116, 2019 Wa. Laws, Ch. 288.
[2] Complaint, ¶ 15 (original emphasis).

6 On one hand, the Complaint appears to request the Commission to require a SCGHG adder for Washington-specific resources. On the other, it could be interpreted to require a SCGHG adder for PacifiCorp's out-of-state businesses and out-of-state resources, even though these resources are not allocated to, nor serve, Washington-jurisdictional customers.

7 If the former interpretation of the Complaint is correct, the Company remains committed to cooperatively implementing CETA, and the CEIP docket is the appropriate forum to address Staff's concern effectively and judiciously. Dismissing is the sensible approach, and it would preserve Staff's ability to raise, and the Commission to resolve, how to correctly incorporate the SCGHG for Washington-specific resources in the CEIP docket. However, if the latter interpretation, dismissal is also appropriate because the Commission lacks the authority to regulate other states.

8 Both interpretations also suffer from the same due process concern. PacifiCorp was not provided adequate notice of the contested issue, nor a meaningful opportunity to be heard. Under either interpretation the result is the same: The Commission must dismiss Staff's Complaint for failure to state a claim, and PacifiCorp is entitled to judgment on the pleadings. PacifiCorp respectfully requests oral argument on this motion.

II. Background

9 CETA attempts to address the impacts of climate change by "transforming [Washington's] energy supply, modernizing its electricity system, and ensuring that the benefits of this transition are broadly shared throughout the state."[3] CETA's principal

[3] RCW 19.405.010(1).

requirements direct utilities to: (1) eliminate coal-fired resources from serving Washington customers;[4] (2) achieve greenhouse gas neutrality by 2030;[5] and (3) supply 100 percent of retail load with non-emitting and renewable electric resources by 2045.[6]

10 The Commission initiated several rulemakings to implement the law. On December 28, 2020, the Commission issued General Order R-601, which finalized several proposed rulemakings regarding CETA and utility IRP practices.[7] Relevant here, the Order provided general guidance for how utilities should implement CETA, including the SCGHG, within utility-specific IRPs and CEIPs.[8] The order also noted the importance of collaboration on the difficult challenges of implementing CETA, and that the rules were designed to provide utilities with a flexible framework for their particular needs and circumstances.[9]

11 PacifiCorp subsequently filed its 2021 draft IRP with the Commission on January 4, 2021, and updated the IRP on April 1, 2021.[10] The Commission provided the Company until September 1, 2021, to file a final IRP, noting that PacifiCorp "credibly faces challenges with meeting the new, detailed requirements for IRP modeling following the passage of CETA, specifically with its transition to the new Plexos modeling software."[11] The Order directed PacifiCorp to incorporate specific SCGHG requirements

[4] RCW 19.405.030(1)(a).
[5] RCW 19.405.040(1)(a).
[6] RCW 19.405.050(1).
[7] *In re CETA Rulemaking*, Dkts. UE-191023 & UE-190698 (Consolidated), General Order R-601 (Dec. 28, 2020).
[8] *Id.* ¶¶ 127–132.
[9] *Id.* ¶ 135.
[10] *In re PacifiCorp 2021 IRP,* Dkt. UE-200420.
[11] Order 02 Requiring Compliance with IRP Statutes and Rules, ¶ 16 (Jun. 10, 2021).

in the final IRP.[12] PacifiCorp subsequently filed its final IRP on September 1, 2021, with an update on April 4, 2022.

12 PacifiCorp filed a draft CEIP with the Commission on November 1, 2021, and a petition to exempt PacifiCorp from WAC 480-100-605, which requires the "alternative lowest cost and reasonably available portfolio" to include the SCGHGs in PacifiCorp's "resource acquisition decision.[13] After briefing the issue, the Commission denied PacifiCorp's petition.[14]

13 The Commission's Order was silent regarding how PacifiCorp should specifically incorporate the SCGHG in its CEIP modeling.[15] PacifiCorp filed its final CEIP on December 30, 2021.

III. Standard of Review

14 The Commission will dismiss a complaint for failure to state a claim upon which relief can be granted, or for judgment on the pleadings.[16] This includes cases where the Commission lacks jurisdiction or the authority to grant the requested relief, the matter is not ripe for Commission determination, the proceeding would be contrary to statute or rule, the subject matter will be considered in another proceeding, or the applicant lacks standing to request the relief it seeks from the Commission.[17]

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[12] *Id.,* Attachment A, at 2–3.
[13] *In re PacifiCorp 2021 CEIP,* Dkt. UE-210829, Exemption Petition (Nov. 1, 2021).
[14] *Id.,* Order 01 Denying Petition (Dec. 13, 2021).
[15] *Id.* ¶ 11 ("Finally, we agree with Staff's recommendation and require PacifiCorp to include in its CEIP both an Alternative LRCP and a preferred portfolio that incorporates the SCGHG as required by WAC 480-100-605 and RCW 19.280.030(3)(a). The Company must use these portfolios in its calculation of projected incremental cost, as required by WAC 480-100-640(7)."); *Id.* ¶ 18 ("The Commission Orders . . . PacifiCorp d/b/a/ Pacific Power & Light Company incorporate the SCGHGs as outlined in paragraph 11 above.").
[16] WAC 480-07-380(1)(a); *Washington Attorney General's Complaint v. PacifiCorp,* Dkt UE-110070, Order 01, ¶ 6 (Apr. 27, 2011).
[17] WAC 480-07-305(5)(b)(i)–(v).

15 Staff has the burden to prove their case.[18] Dismissal is appropriate if Staff "cannot prove any set of facts that would justify recovery."[19] Motions to dismiss "should be granted sparingly and with care."[20] The same standard of review applies for both CR 12(b)(6) and CR 12(c) motions.[21]

IV. Argument

16 The Staff Complaint has three material flaws.

17 First, the Complaint violates PacifiCorp's due process rights. The Complaint deprives PacifiCorp of its rights to reasonable notice of the contested issue and a meaningful opportunity to be heard. Staff's concerns are more appropriately resolved in PacifiCorp's CEIP docket.

18 Second, the Complaint does not explain how PacifiCorp's alleged modeling error results in any specific harm or injury. Indeed, that would be difficult to accomplish, because a CEIP is a four-year planning document that only outlines potential strategies that PacifiCorp may pursue to meet CETA's statutory targets. These requirements are several planning cycles away, and dependent upon uncertain future events. There is no actual harm or an issue that is ripe for decision.

19 Finally, the Complaint appears to request PacifiCorp to include the SCGHG in the 2021 IRP preferred portfolio, even for resources that are not allocated to, nor serve, Washington customers. If accurate, the United States Constitution, and Federal and Washington statutes do not provide the Commission with that authority.

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[18] *AG Complaint,* ¶ 45 ("Complainants would have the burden of going forward. That is, they would be required at the outset [to] establish by more than bare assertions that there is some set of facts that would, if fully developed, convince the Commission to take action against the Company or its employees.").
[19] *Keodalah v. Allstate Insurance Company,* 194 Wash.2d 339, ¶ 12 (2019).
[20] *Id.*
[21] *P.E. Systems, LLC, v. CPI Corp.,* 176 Wash.2d 198, ¶ 7 (2012) ("We treat a CR 12(c) motion for judgment on the pleadings identically to a CR 12(b)(6) motion to dismiss for failure to state a claim.")

A. The Complaint violates PacifiCorp's due process rights.

20 Due process is flexible.[22] At a minimum it requires reasonable notice of the issues presented, and a meaningful opportunity to be heard.[23] Staff's Complaint provides neither.

21 Specific to notice, the void-for-vagueness doctrine guarantees "that ordinary people have fair notice of the conduct a statute proscribes."[24] The doctrine "guards against arbitrary or discriminatory law enforcement by insisting that a statute provide standards to govern the actions of police officers, prosecutors, juries, and judges."[25] Courts ask whether "the law gives a person of ordinary intelligence fair notice of what is prohibited . . . not whether a particular plaintiff actually received a warning that alerted him or her to the danger of being held accountable for the behavior in question."[26]

22 Staff's Complaint is objectively ambiguous. The Complaint could be fairly read to require at least three separate types of relief. For example, the Complaint could request PacifiCorp to include the SCGHG: (1) in the 2021 IRP preferred portfolio for Washington-allocated resources; (2) in the 2021 IRP preferred portfolio for resources allocated beyond Washington; or (3) requiring a second-rail IRP process specific only to Washington, and separate from PacifiCorp's six-state planning processes.

23 This ambiguity is reasonable and expected, because Commission Order 01 was not fact-dependent. Rather the Order concluded—as a matter of law—that PacifiCorp

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[22] *Morrison v. State Dep't of Lab. & Indus*., 277 P.3d 675, ¶ 6 (2012) (citing *Mathews v. Eldridge,* 424 U.S. 319, 334 (1976).
[23] *Id.* (citing *Cleveland BOE v. Loudermill,* 470 U.S. 532, 542 (1985)).
[24] *Kashem v. Barr*, 941 F.3d 358, 369 (9th Cir. 2019) (citing *Sessions v. Dimaya,* 138 S.Ct. 1204, 1212 (2018)).
[25] *Id.*
[26] *Id.*

must incorporate the SCGHG.[27] This legal conclusion was appropriate, because that was what PacifiCorp requested: a legal determination of whether the Commission would waive the requirements of WAC 480-100-605, not a fact-specific determination of how to exactly model the SCGHG.[28]

24 Consistent with Order 01, PacifiCorp diligently incorporated the SCGHG in its CEIP. This resulted in 212,431 MWh of increased energy efficiency targets to comply with CETA's SCGHG requirement.[29]

25 While Courts apply a less exacting void-for-vagueness standard for economic concerns,[30] Staff's Complaint remains unconstitutionally vague. It is unclear how Staff can interpret Order 01 to require a specific incorporation of the SCGHG, when Staff made an effort to highlight that PacifiCorp's exemption petition was not fact-dependent.[31] It is even less clear how Staff's interpretation of Order 01 provides an adequate basis for a Complaint and administrative penalties. Penalizing PacifiCorp based on one of several reasonable interpretations of Order 01 contradicts "ordinary notions of fair play," and violates PacifiCorp's due process right to adequate notice.[32]

26 The Complaint also deprives PacifiCorp of its right to meaningfully participate.

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[27] Order 01, ¶ 11 ("Finally, we agree with Staff's recommendation and require PacifiCorp to include in its final CEIP both an Alternative LRCP and a preferred portfolio that incorporates the SCGHG as required by WAC 480-100-605 and RCW 19.280.030(3)(a). The Company must use these portfolios in its calculation of projected incremental cost, as required by WAC 480-100-640(7).").
[28] *In re PacifiCorp CEIP,* Dkt. 210829, Exemption Petition, at 1 (Nov. 1, 2021).
[29] CEIP, at 7-23.
[30] *Kashem,* 941 F.3d at 370.
[31] *In re PacifiCorp CEIP,* Dkt. UE-210829, Staff Response to Exemption Petition, at 8–9 (Dec. 6, 2021) ("The Company has not supported the claims in its petition with sufficient evidence to meet the public interest standard under WAC 480-07-110.").
[32] *Sessions,* 138 S.Ct. at 1212.

27 PacifiCorp's CEIP docket is in its initial stages. The Commission will resolve the docket as either an informal or adjudicative proceeding,[33] and has not established a procedural schedule beyond a deadline to comment.[34] The Commission has issued Order 01, however that decision indicated that the Commission will retain jurisdiction over PacifiCorp's CEIP until the docket is resolved.[35]

28 Regardless as to how the Commission proceeds (either as an informal or adjudicative proceeding), additional process is required.[36] At minimum, PacifiCorp is entitled to a hearing,[37] and likely the rights to administrative review,[38] reconsideration,[39] rehearing,[40] judicial review,[41] and appeal.[42]

29 Of course, "due process is flexible."[43] But surely due process includes the right to exhaust the Commission's administrative procedures, prior to responding to a Complaint on that yet-to-be-resolved docket. To the point, if PacifiCorp seeks judicial review of any Commission decision resulting from this docket (UE-220376), PacifiCorp's petition would likely be dismissed for failure to exhaust administrative remedies in the CEIP docket (UE-210829).[44]

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[33] WAC 480-100-645; *e.g., In re Puget Sound Energy CEIP,* Dkt. UE-210795, Notice of Prehearing Conference, ¶ 4 (Apr. 19, 2022) (proceeding as an adjudication).
[34] *In re PacifiCorp CEIP*, Dkt. UE-210829, Notice of Opportunity to File Written Comments (Jan. 7, 2022).
[35] Order 01, ¶ 18.
[36] WAC 480-100-645(2) ("The commission will enter an order approving, rejecting, or approving with conditions the utility's CEIP or CEIP update at the conclusion of its review.");
[37] RCW 19.405.060(1)(c) ("The Commission, after a hearing, must by order approve, reject, or approve with conditions an investor-owned utility's clean energy implementation plan and interim targets.").
[38] WAC 480-07-825.
[39] WAC 480-07-850.
[40] WAC 480-07-870.
[41] RCW 34.05.518
[42] RCW 34.05.526.
[43] *Mathews,* 424 U.S. at 334.
[44] RCW 34.05.534.

30 Due process guards against exactly these types of procedural traps. Dismissal is required, though importantly Staff would still retain the ability to raise, and the Commission could resolve, how to correctly incorporate the SCGHG in UE-210829.[45]

B. The Complaint fails to allege harm or injury.

31 The Complaint must raise an issue with tangible harm, and cannot be contingent on future events. Yet the Complaint is silent on any real-world impact, and while PacifiCorp's multi-decadal CETA compliance plan is many things, it is not a crystal ball.

32 The judicial power extends to "cases" and "controversies."[46] Staff must demonstrate that they have suffered an injury that is "concrete—that is, real, and not abstract," because Courts can only resolve a "real controversy with real impacts on real persons."[47] Washington draws from federal authorities when determining whether parties have standing under the Administrative Procedures Act.[48]

33 Similarly, ripeness prevents adjudicators "from entangling themselves in abstract disagreements over administrative policies," and protects agencies "from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties."[49] An agency decision is ripe if it is "not dependent on contingent future events that may not occur as anticipated, or indeed may

[45] Staff has already raised this issue in that docket. *In re PacifiCorp's 2022 CEIP,* Dkt. UE-210829, Commission Staff Comments Regarding PacifiCorp's Clean Energy Plan, at 6–7 (May 6, 2022) ("Staff concludes that, despite repeated guidance provided to the Company, PacifiCorp's lowest reasonable cost portfolio fails to comply with statute, rule, and order.").
[46] U.S. Const. Art. III, § 2, Cl. 1.
[47] *TransUnion LLC v. Ramirez,* 141 S.Ct. 2190, 2203 (2021) (quoting *American Legion v. American Humanist Assn.,* 139 S.Ct. 2067, 2103 (2019).
[48] *Center for Biological Diversity v. Dep't Fish and Wildlife,* 474 P.3d 1107 (2020) (interpreting RCW 34.05.530).
[49] *National Park Hosp. Ass'n. v. Dep't. of Interior*, 538 U.S. 803, 807 (2003) (quoting *Abbot Laboratories v. Gardner,* 387 U.S. 136, 148 (1967).

not occur at all."[50] Understandably, most "final agency actions"[51] are ripe for review, while most interim agency actions are not.[52]

34 Consistent with state and federal judicial powers, the Commission should dismiss the Complaint for failure to allege concrete harm, and for not being ripe.

35 Staff asserts that PacifiCorp's alleged failure to incorporate SCGHGs in the preferred CEIP portfolio "will guarantee that the projected incremental cost will be calculated incorrectly," though Staff provides no evidence to support that claim or allege any harm or injury.[53] Further, "properly including the SCGHGs into the preferred portfolio may have a meaningful impact on resource acquisition decisions," though Staff does not quantify any potential impacts.[54] Importantly, Staff proceeds to state that PacifiCorp's CEIP might in fact not present any harm: "Staff believes that the Alternative LRCP *may* meet the requirements in rule but finds it difficult to verify this with any certainty based on the information that the Company supplied in its workpapers."[55]

36 Even when viewed in the most favorable light, Staff's allegations do not present a concrete injury. Rather, Staff asserts that at some point in the undetermined future (potentially 2025, 2030, or 2045), PacifiCorp may procure resources, and while those

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[50] *Trump v. New York*, 141 S.Ct. 530, 535 (*quoting Texas v. United States,* 523 U.S. 296, 300 (1998)).
[51] *National Park,* 538 U.S. at 812; *Administrative Law and Practice,* Charles H. Koch Jr., "Ripeness" § 14.21[1] (2nd Ed. 1997) ("Generally, judicial review of formal agency adjudication is a simple, straight-forward matter that does not require extended discussion. The lack of cases in this area is testimony that the problem of ripeness is virtually non-existent.")
[52] *Administrative Law and Practice,* Charles H. Koch Jr., "Ripeness" § 14.21[4] (2nd Ed. 1997) (discussing cases that were dismissed as unripe because they arose from interim agency actions, including *Phillips Petroleum Co. v. Lujan,* 963 F.2d 1380 (10th Cir. 1992); *Abbs v. Sullivan,* 963 F.2d 918 (7th Cir. 1992); *Amalgamated Clothing v. SEC,* 15 F.3d 254 (2d Cir. 1994); *Pub. Citizen v. U.S. Trade Rep.* 970 F.2d 916 (D.C.Cir. 1992); *Foundations on Economic Trends v. Lyng,* 943, F.2d 79 (D.C.Cir. 1991); *US v. Durham,* 963 F.2d 185 (8th Cir. 1992); and *Pub. Citizen v. U.S. Trade Rep.,* 5 F.3d 549 (D.C.Cir. 1993)).
[53] Complaint, ¶ 24.
[54] *Id.* ¶ 26.
[55] *Id.* ¶ 15 (original emphasis).

resources will likely differ from those identified in PacifiCorp's 2022 CEIP (and subsequent CEIPs for that matter),[56] that if PacifiCorp seeks rate recovery of these yet-to-be identified or procured resources, that presumably the Commission should find PacifiCorp's decisions were not prudent. Or in the alternative, PacifiCorp decisions "*may* meet the requirements in rule," in which case Staff would not oppose PacifiCorp's request for cost recovery of CETA resources.[57]

37 The Complaint fails to allege concrete injury because CEIPs (like IRPs) are prospective tools. While they are instructive policy and planning documents, actual utility resource decisions may diverge from these plans based on then-current technological and market constraints, and from bids that result from specific PacifiCorp requests for proposals (RFPs).

38 Similarly, PacifiCorp's CEIP is in the initial stages of agency process. For example, the Commission has not yet approved, conditionally approved, or rejected PacifiCorp's CEIP.[58] This Complaint focuses on Commission Order 01 from that proceeding.[59] By definition, Order 01 is an interim decision.[60] This is not a "final agency action," and does not present an issue that is ripe for Commission review.[61]

39 More importantly, the Complaint is "dependent on contingent future events that may not occur as anticipated, or indeed may not occur at all."[62]

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[56] RCW 19.405.060(1)(a) (requiring PacifiCorp to file a CEIP every four years).
[57] Complaint, ¶ 15 (original emphasis).
[58] RCW 19.405.060(1)(c); WAC 480-100-645(2).
[59] Complaint ¶ 21 ("PacifiCorp violated Order 01 of Docket UE-210829 by filing the final CEIP with a CEIP preferred portfolio that did not incorporate the SCGHGs as explicitly ordered in paragraphs 11 and 18 of the order.").
[60] WAC 480-07-810(1) (though note that this regulation only applies to adjudicative proceedings, and PacifiCorp's CEIP has not been designated as one yet).
[61] *National Park,* 538 U.S. at 812; WAC 480-07-305(5)(b)(ii).
[62] *Trump v. New York*, 141 S.Ct. 530, 535 (*quoting Texas v. United States,* 523 U.S. 296, 300 (1998)).

40 The Commission has the power to enforce CETA, and can require PacifiCorp to take specific actions to comply.[63] These powers are constrained by competing statutes that require the Commission to maintain the safe, reliable operation and balance of PacifiCorp's system; by complying with CETA at the lowest reasonable cost and risk; by ensuring all customers benefit from PacifiCorp's actions; and ensuring no customer class is unreasonably harmed.[64]

41 Taken together, the Commission can require alternative targets and timelines to meet CETA's 2025, 2030, and 2045 statutory requirements. But exactly how the Company complies with CETA will be informed by various uncertain and competing factors: changes in market price and market structure, technological developments, changes to federal and state law, adoption of new PacifiCorp multi-state allocation methodologies, to name a few. And if the Company cannot decarbonize its generation fleet, PacifiCorp can nonetheless comply with CETA prior to 2045 with various alternative compliance options, including compliance payments, purchasing unbundled renewable energy credits, investing in energy transformation projects, or procuring energy recovery from municipal solid waste facilities.[65]

42 Respectfully, the Commission can determine if PacifiCorp complied with CETA when PacifiCorp requests the Commission to approve—if ever—rate recovery of specific CETA resources.

[63] RCW 19.405.100(2), WAC 480-100-665(3)(b)–(c), WAC 480-100-645(2)(a)–(b).
[64] RCW 19.405.060(1)(c)(i)–(iv).
[65] RCW 19.405.040(1)(b).

C. The Commission lacks the power to grant Staff's relief.

43 The Commission's authority is constrained by the Federal Power Act, the Commerce Clause of the United States Constitution, and Washington statutes. If Staff's Complaint seeks to require PacifiCorp to incorporate the SCGHG in PacifiCorp's 2021 preferred portfolio for resources that are not allocated to serve Washington, each of these authorities prevent the Commission from granting Staff's relief.

44 The Federal Power Act provides the Federal Energy Regulatory Commission (FERC) with the exclusive jurisdiction to regulate "the sale of electric energy at wholesale in interstate commerce."[66] This includes both the "rates and charges" for wholesale sales, and "all rules and regulations affecting or pertaining to such rates or charges."[67]

45 Of course, "the law places beyond FERC's power, and leaves to the States alone, the regulation of 'any other sale'—most notably, any retail sale—of electricity."[68] This leaves states with the power to regulate "facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce."[69] But federal law preempts all state decisions that "*directly* affect the wholesale rate."[70]

46 Similarly, the Commerce Clause provides Congress with the power to "regulate commerce . . . among the several states."[71] The "critical inquiry is whether the practical

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[66] *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 154 (2016) (citing 16 U.S.C. § 824(b)(1).
[67] 16 U.S.C. § 824d(a).
[68] *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 265 (2016) (citing 16 U.S.C. § 824(b)).
[69] 16 U.S.C. § 824(b)(1); *See Pacific Gas & Elec. Co. v. State Energy Resources Cons.,* 461 U.S. 190, 205 (1983) ("Need for new power facilities, their economic feasibility, and rates and services, are areas that have been characteristically governed by the States.").
[70] *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 279 (2016) (original emphasis; cleaned up).
[71] U.S. Const. Art. I, § 8, Cl. 3.

effect of the regulation is to control conduct beyond the boundaries of the State."[72] Any statute "that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limitations of the enacting State's authority."[73]

47 Under CETA, PacifiCorp "must incorporate the social cost of greenhouse gas emissions as a cost adder" when "developing integrated resource plans and clean energy plans," and when "evaluating and selecting intermediate term and long-term resource options."[74] But this statute is limited to utilities that provide retail electric services "*in the state*."[75] Similarly, the Commission has the power to regulate "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."[76] "Electrical companies" are limited to those "operating or managing any electric plant for hire *within this state.*"[77]

48 PacifiCorp's IRP, based entirely on least-cost least-risk fundamentals, plans for significant transformation of the Company's six-state system by 2040. The IRP preferred portfolio includes: 4,290 MWs of energy efficiency programs; 5,628 MWs of new solar resources (most paired with storage); 3,628 MWs of new wind resources; 6,181 MWs of storage resources; 2,448 MWs of direct load control programs; 1,500 MWs of advanced nuclear; all paired with significant transmission investments.[78] PacifiCorp anticipates securing many of these resources before 2026.[79] PacifiCorp's CEAP was included within

[72] *Healy v. Beer Inst.,* 491 U.S. 324, 336 (1989); *Rocky Mountain Farmers Union v. Corey*, 730 F.3d 1070, 1101 (9th Cir. 2013).
[73] *Healy,* 491 U.S. at 336.
[74] RCW 19.280.030(3)(a)(ii)–(iii).
[75] RCW 19.280.020(10) (emphasis added).
[76] RCW 80.01.040 (emphasis added).
[77] RCW 80.04.010(11) (emphasis added).
[78] IRP, 2–3.
[79] *Id.* at 8-18.

the IRP, and "provides a Washington-specific roadmap of how PacifiCorp is planning for a clean and equitable energy future relative to the requirements of CETA."[80]

49 PacifiCorp filed its CEIP with the Commission on December 30, 2021. The CEIP details the specific supply, energy efficiency, demand response, and community outreach and engagement targets that PacifiCorp will pursue over the next four years aligned with CETA compliance.[81] These targets include: (1) 1,792 MWs of wind, 95 MWs of solar, 1,211 MWs of solar generation co-located with storage, and 200 MWs of stand-alone battery storage resulting from PacifiCorp's 2020 all-source RFP shortlisted resources; (2) 590 MWs of wind generation through long-term PPAs; (3) additional yet-to-be determined resources from PacifiCorp's 2022 all-source RFP; (4) 212,431 MWh of energy efficiency targets for Washington; (5) 37.4 MWs of demand response capacity based on the 2021 demand response RFP (with potential additions based on the results of the Company's time-of-use pilot); and (6) removing all coal from Washington retail allocations by 2023, retirement of 14 coal units by 2030, and an additional 19 units by the end of 2040.[82]

50 The CEIP estimates that by 2026 the Company's emissions will have declined 26 percent, and that PacifiCorp's targets "are well-aligned with Washington's ambitious, but achievable goal of 100 percent clean energy by 2045."[83]

51 Relevant here, the CEIP incorporated the SCGHG for Washington-allocated energy efficiency resources.[84] For example, the CEIP adopted Washington energy

[80] IRP, Appendix O, at 243.
[81] CEIP, at 7.
[82] *Id.* at 7-23.
[83] *Id.* at 8.
[84] *Id.* at 89, 93-102; *Id.* at Appendix A – Stakeholder Input and Responses, Responses 262–263; *Id.* at Appendix D – Supporting References and Workpapers.

efficiency targets from the 2021 IRP preferred portfolio which was optimally selected based on the P02-SCGHG portfolio using SC-GHG as a dispatch adder.[85] Appropriately, PacifiCorp's IRP preferred portfolio did not include resource selections, including retirements, driven by the incorporation of SCGHGs for any resources not allocated to serve Washington customers.

52 However, contrary to federal and state law, Staff's Complaint appears to require the SCGHG in PacifiCorp's 2021 IRP preferred portfolio for resources that will not serve Washington.[86] If correct, this would require PacifiCorp to incorporate a $61 to $115 adder for each metric ton of carbon dioxide emitted across the Company's six-state service territory, develop a preferred portfolio with the adder, and pursue resource acquisition and retirement decisions based on that preferred portfolio.[87] All six of PacifiCorp's registered business entities in Washington, Oregon, California, Utah, Wyoming, and Idaho would be required to implement this Washington-specific policy.

53 The Legislature has not provided the Commission with this authority to fix the prices for out-of-state goods, services, or businesses.[88] Nor could it.[89]

54 If this is Staff's aim, the Commission should dismiss the Complaint. Of course, the Commission can require PacifiCorp to model and analyze the SCGHG in various IRP

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[85] *Id.*
[86] Complaint ¶ 23 ("By the Company's admission in the November 2021 petition, the IRP's preferred portfolio did not include the SCGHGs, and this was incorporated into the CEIP preferred portfolio. As the Commission recognized in the adoption order, the CEIP preferred portfolio must account for the SCGHGs.").
[87] *In re SCGHG Investigation,* Dkt. U-190730, Order 01, ¶ 2 (Jul, 30, 2020).
[88] RCW 19.280.020(10), RCW 80.01.040, RCW 80.04.010(11) (limiting the Commission's powers to regulate utility rates and services within the State of Washington).
[89] *FERC,* 577 U.S. at 279 (the Federal Power Act preempts state commission decisions that "*directly* affect wholesale rates") (original emphasis); *Healy,* 491 U.S. at 336 (any "statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's authority."); *Nat'l Pork Producers Council v. Ross*, 6 F.4th 1021, 1028 (9th Cir. 2021), cert. granted, 142 S. Ct. 1413 (2022) (price control statutes violate the extraterritoriality prohibition in the Dormant Commerce Clause).

scenarios. But that is a separate question than requiring PacifiCorp to incorporate an adder for out-of-state resources. To avoid further confusion, the Commission should clarify that RCW 19.280.030(3)(a) requires utilities to incorporate the SCGHG in IRPs, CEAPs, and CEIPs, but only for Washington-allocated resources and utility planning decisions.[90] The Commission's rulemaking did not address this specific issue.[91]

55 In the alternative, the Complaint could also be interpreted to require PacifiCorp to only model SCGHGs for Washington-allocated resources, or require a second-rail IRP process specific for Washington and separate from the Company's six-state territory. Under this much narrower interpretation, the Commission should nonetheless dismiss the Complaint because the CEIP lawfully incorporated the SCGHG for Washington resources.[92] Staff and PacifiCorp may debate the marginally more-correct way to incorporate the SCGHG, but those minor issues are more appropriately resolved in Docket UE-210829, where PacifiCorp remains committed to proactively resolving stakeholder concerns.[93]

[90] RCW 19.280.030(3)(a) ("As electric utility shall consider the social cost of greenhouse gas emissions, *as determined by the Commission* . . .") (emphasis added).
[91] General Order R-601, ¶¶ 127–132.
[92] CEIP at 89, 93-102; *Id.* at Appendix A – Stakeholder Input and Responses, Responses 262–263; *Id.* at Appendix D – Supporting References and Workpapers.
[93] WAC 480-7-305(5)(b)(iv) ("While other circumstances may justify not commencing an adjudicative proceeding, the commission will not commence an adjudicative proceeding under the following circumstances: . . . The subject matter is being, or will be, considered in another proceeding.").

V. Conclusion

56 For the foregoing reasons, PacifiCorp respectfully requests the Commission dismiss Staff's Complaint.

Dated this 27th day of June, 2022.

/s/ Zachary Rogala
Zachary Rogala
Montana Bar #42343765
Senior Regulatory Counsel
PacifiCorp
825 NE Multnomah Street
Suite 2000
Portland, Oregon
Tel. (435) 319-5010
Email: Zachary.rogala@pacificorp.com

Attorney for PacifiCorp