

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

<p>WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,  Complainant,  v.  PACIFICORP d/b/a PACIFIC POWER &amp; LIGHT COMPANY,  Respondent.</p>	<p>DOCKETS UE-210829</p>
<p>WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,  Complainant,  v.  PACIFICORP d/b/a PACIFIC POWER &amp; LIGHT COMPANY,  Respondent.</p>	<p>DOCKET UE-220376  COMMISSION STAFF’S MOTION TO CONSOLIDATE PROCEEDINGS</p>

**I. INTRODUCTION**

*1* Staff respectfully requests that the Commission consolidate PacifiCorp’s 2021 Clean Energy Implementation Plan (CEIP), Docket UE-210829 (CEIP Docket) with the formal complaint for penalties issued in Docket UE-220376 (Complaint Docket). Given the Commission’s duty to enforce the Clean Energy Implementation Act (CETA), the agency’s decision to “approve, reject, or approve with conditions” the CEIP under RCW 19.405.060(1)(c) is dependent upon an evaluation of whether the CEIP is compliant with all the relevant statutes, Commission rules, and previous Commission orders related to the CEIP.

2 Staff has shared this motion with all of the other known parties in advance of filing. Although some parties responded to Staff that they do not object to the motion or take no position, Staff does not know the position of all of the parties. Therefore, to preserve the opportunity of all parties to respond to this motion if and as they wish, Staff is not making any representations in this motion about any specific party's position.

## II. RELIEF REQUESTED

3 Staff respectfully requests that the Commission consolidate PacifiCorp's CEIP Docket with the complaint in Docket UE-220376. Staff further requests that the Commission set the procedural schedule of the consolidated dockets for adjudication,<sup>1</sup> including a public comment hearing on the CEIP that will substitute for the open meeting typically required under WAC 480-100-645. Lastly, the Company informed Staff that it plans to file a dispositive motion in the Compliant Docket prior to that docket's prehearing conference on June 30, 2022. Staff therefore recommends that the Commission delay issuing a decision on this motion to consolidate and delay issuing a prehearing conference order in the Complaint Docket until after the Commission rules on the Company's dispositive motion. Staff believes that the prehearing conference should remain set for June 30, as the parties can discuss and recommend a procedural schedule that would serve regardless of whether these dockets are consolidated.

## III. STATEMENT OF FACTS

On December 30, 2021, PacifiCorp filed its final Clean Energy Implementation Plan (CEIP) in Docket UE-210829. Under RCW 19.405.060(1)(c), "[t]he commission, after a hearing, must by order approve, reject, or approve with conditions an investor-owned

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<sup>1</sup> Pursuant to WAC 480-100-645(2), this motion acts as Staff's request for an adjudication in the CEIP Docket.

utility's clean energy implementation plan and interim targets.” CETA tasks the Commission with enforcing the statute against investor-owned utilities.<sup>2</sup> Currently, the CEIP Docket has not been set for an adjudication or an open meeting pursuant to WAC 480-100-645(2). On June 6, 2022, the Commission issued a formal complaint in Docket UE-220376. The complaint alleges violations of statute, Commission rule, and Commission order all related to PacifiCorp’s final CEIP filing. Specifically, the complaint alleges that the Company did not properly incorporate the Social Cost of Greenhouse Gases (SCGHGs) in the final CEIP’s preferred portfolio as required by statute, commission rule, and paragraphs 11 and 18 of Order 01 in Docket UE-210829.<sup>3</sup>

#### **IV. STATEMENT OF ISSUES**

4           Should the Commission consolidate PacifiCorp’s 2021 CEIP Docket with the  
Compliant Docket?

#### **V. EVIDENCE RELIED UPON**

5           Staff relies on the documents on file in Dockets UE-210829 and UE-220367.

#### **VI. ARGUMENT**

6           Parties may move to consolidate proceedings if “the facts or principles of law are related” between them.<sup>4</sup> Where proceedings share related facts or principles of law, the Commission’s willingness to consolidate turns on whether doing so serves the ends of

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<sup>2</sup> RCW 19.405.090(9); RCW 19.405.100(2).

<sup>3</sup> See Docket UE-220376, *Compliant for Penalties* at 6, ¶ 20- 7, ¶ 24 (June 6, 2022).

<sup>4</sup> WAC 480-07-320.

“judicial economy and administrative efficiency”<sup>5</sup> or “unduly delay[s] the resolution of one or all of the proceedings.”<sup>6</sup>

7           First, the complaint and the CEIP share the same facts. The complaint is based entirely on Order 01 of PacifiCorp’s CEIP docket and the contents of the final CEIP filed in that same docket. The decision to “approve, reject, or approve with conditions” in the CEIP Docket is based upon the contents of the final CEIP filed by PacifiCorp. There are no facts outside of the CEIP Docket that are relevant to the violations alleged in the Complaint Docket.

8           Second, the principles of law in these dockets are not the same, but they are highly correlated. As mentioned above, a prerequisite of approving a CEIP is determining that it complies with all the relevant statutes and rules. Therefore, to decide the question at issue in the CEIP Docket under RCW 19.405.060(1)(c), it would be necessary for the Commission to first determine whether the CEIP preferred portfolio complies with requirement to include the SCGHGs as a cost adder and incorporate that portfolio correctly into the projected incremental cost calculation. In summary, the determination called for in the complaint is a necessary subset of the overall approval question posed in the CEIP docket.

9           Because of the overlap of the facts and principles of law in these cases, consolidation serves judicial economy and creates administrative efficiency. In the absence of consolidation, the issues raised in the complaint would still need to be addressed within the CEIP Docket, which would unnecessarily duplicate the efforts of the parties and the

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<sup>5</sup> *In re Determining the Proper Classification of Lowper, Inc. d/b/a Lowper Corp., a/k/a Lowper Water Co. & Iliad, Inc. d/b/a Lowper Water Sys.*, Dockets UW-091006 & UW-110213 (Consolidated), Order 02/Order 01, 2, ¶ 5 (Mar. 24, 2011).

<sup>6</sup> *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-111048 & UG-111049 (Consolidated) & UG-110723, Order 04, at 4, ¶ 8 (Sept. 7, 2011).

Commission. Further, Staff seeks relief in the complaint that would directly impact the CEIP Docket. Along with the penalties requested by Staff, Staff also requested that the Commission order PacifiCorp to refile in the CEIP Docket a CEIP with a preferred portfolio that properly includes the SCGHGs, as required by Order 01.<sup>7</sup> Should this relief be granted, there is an obvious impact on the CEIP Docket's procedural schedule, and conversely, while a decision on whether to grant the relief requested in the complaint is pending, a determination in the CEIP Docket cannot be made.

10           Finally, consolidation will not unduly delay the resolution of either the complaint or the CEIP. The CEIP Docket currently does not have a procedural schedule set, and Commission determination on the CEIP has no statutory deadline. The complaint has just begun, and a prehearing conference is set for June 30, 2020. Both dockets are in their initial phases, and there is no reason to believe consolidation will cause undue delay.

## VII. CONCLUSION

11           For the reasons set out above, the Commission should grant Staff's motion and consolidate the complaint in Docket UE-220376 with the Company's CEIP, Docket UE-210829.

DATED this 27th day of June, 2022.

Respectfully submitted,

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<sup>7</sup> Complaint at 7, ¶ 26.