Service Date: May 3, 2024

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Proceeding to Develop a Policy Statement Addressing the Impacts of the Federal Inflation Reduction Act and the Infrastructure Investment and Jobs Act	DOCKET U-240013 POLICY STATEMENT ADDRESSING THE FEDERAL INFLATION REDUCTION ACT AND THE INFRASTRUCTURE INVESTMENT AND JOBS ACT IN UTILITY PLANNING

I. INTRODUCTION AND PROCEDURAL BACKGROUND

1 On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act of 2021 (IIJA) PL 117-58, 135 Stat 429, which seeks to upgrade the nation's energy infrastructure for a clean, resilient, and secure energy future.[1] The IIJA funds over 350 programs to be overseen through more than a dozen federal departments and agencies.[2]

2 On August 16, 2022, President Biden signed the Inflation Reduction Act (IRA) PL 117-169, 136 Stat 1818, into law. The IRA is a fiscal policy instrument enacted by the federal government to counterbalance the effects of inflation in specific areas of the economy. It also represents the United States' single largest investment to date to modernize its energy system.[3]

3 Together, the IIJA and IRA represent material investment by the United States to modernize the energy system. These federal programs come at a time when Washington State is actively implementing the Clean Energy Transformation Act (CETA) of 2019, decarbonization requirements under the Climate Commitment Act (CCA) of 2021; and the Washington Decarbonization Act for Large Combination Utilities of 2024 (ESHB 1587).

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[1] https://www.energy.gov/ceser/articles/investing-secure-resilient-and-clean-energy-future.

[2] The White House, A Guidebook to the Bipartisan Infrastructure Law for State, Local, Tribal, and Territorial Governments, and Other Partners (May 2022), https://www.whitehouse.gov/build/guidebook/ [hereinafter IIJA Guidebook].

[3] The White House, Building a Clean Energy Economy: A Guidebook to the Inflation Reduction Act's Investments in Clean Energy and Climate Action (January 2023), https://www.whitehouse.gov/cleanenergy/inflation-reduction-act-guidebook/ [hereinafter IRA Guidebook].

4 On January 18, 2024, the Commission issued a Notice of Workshop and Opportunity to File Written Comments in this docket. The Notice requested responses to 13 questions related to the IRA and IIJA to assist Washington investor-owned utilities (regulated energy companies or utilities) and participants in preparation for the workshop. The Commission received written comments from Avista Corporation, dba Avista Utilities (Avista); Northwest Natural Gas Company (NW Natural); PacifiCorp, dba Pacific Power & Light Company (PacifiCorp); Cascade Natural Gas Corporation (Cascade); Puget Sound Energy (PSE); and the Sierra Club.

5 On March 5, 2024, the Commission held a collaborative workshop to discuss how Washington regulated energy companies can capture benefits of the IRA and IIJA in their planning processes, including but not limited to Integrated Resource Plans (IRPs), Clean Energy Implementation Plans (CEIPs), capital planning, energy conservation efforts, and in the advancement of equity in the utility sector. Representatives from each regulated energy company provided brief presentations followed by open discussion.[4]

6 The Commission expects utilities to pursue all federal funding and financing opportunities that, after evaluation, provide benefit to Washington customers and facilitate progress toward the state's energy policies and mandates. Utility actions in pursuing these opportunities must begin at the resource planning stage and persist through rate recovery with a transparent reporting procedure. While the Commission provides for an incentive opportunity in this policy statement, it also cautions that a failure to put forth genuine effort may result in prudency findings within rate proceedings. The remainder of this policy statement provides an overview of the comments and collaborative discussions regarding the IRA and IIJA funding and more detailed guidance regarding the Commission's expectations and incentive mechanism.

II. COMMENT OVERVIEW

A. Evaluation Process

7 Both in written comments and at the workshop, each utility described their efforts in monitoring for IRA and IIJA opportunities applying varying processes amongst the utilities. Responsibility for monitoring of the opportunities ranges from individual business units with no memorialized business or approval process to a dedicated federal funding staff person or director with robust documented business processes. While some utilities have received project approvals, letters of encouragement to proceed, or have initial applications pending; others continue to evaluate opportunities and await further Internal Revenue Service (IRS) guidance.

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[4] A recording of the March 5 workshop can be found at https://www.utc.wa.gov/casedocket/2024/240013/docsets.

B. Internal Revenue Service Guidance

8 While IRS guidance for IIJA funding appears adequate for electric utilities to pursue opportunities, the IRA guidance is viewed as less certain and less easily attained. Specifically, utilities await final guidance on the tax credit transfer normalization rules.[5] However, the natural gas utilities expressed significant concerns related to IRS Sections 48[6] and 45V.[7] Cascade and NW Natural indicate that they have submitted comments related to the development of final guidance on those two sections, with PSE providing comment on Section 45V.

C. Maximizing Benefits

9 During the workshop, utilities described a wide array of potential benefits of funding opportunities beyond offsetting customer rates with IRA tax credits, including transportation electrification, addressing energy justice through community benefit plans, grid resilience and modernization efforts, and system decarbonization. Further, utilities are identifying other opportunities where the utility would not receive direct benefits but may partner with community organizations, customers, and others to support their efforts that ultimately benefit customers and possibly indirectly benefit utility operations (*e.g.*, a solar array or energy efficiency effort at a public school which then reduces system demand).

10 In its written comment, Sierra Club asserts that utilities should design programs and select equipment that is eligible for IRA funding; educate customers, equipment distributors/installers, and program implementers as to the available incentives; and identify where utility programs can be adjusted to account for a portion or all the needed incentive being provided by IRA funds.

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[5] The U.S. Department of the Treasury and IRS published final rules regarding the transfer of certain credits on April 30, 2024, which can be found at Federal Register :: Transfer of Certain Credits. While the normalization issue is not explicitly addressed in rule, the Treasury and the IRS provide guidance which clarifies that an eligible taxpayer is not subject to the normalization rules with respect to any cash consideration paid by a transferee taxpayer for a specific credit portion that is described in section 6418(b)(2). Any eligible credit that is not transferred remains subject to the normalization rules.

[6] IRS Section 48 relates to additional equipment necessary to process biogas into pipeline quality natural gas for injection into the natural gas system.

[7] IRS Section 45V concerns the requirement for matching hydrogen production with renewable generation on an hourly basis, time to install, and the geographic proximity requirement to electrolysis facility.

D. Challenges and Barriers

11 A host of challenges and barriers were identified, both in written comment and discussed during the workshop. These issues included but are not limited to: the competitiveness for the funding with no guarantee of award; the human resources needed to research and submit applications; the financial resources for matching requirements; remaining uncertainties related to tax rules; the ability to satisfy the domestic content requirement and wage requirements; the need to change business processes to comply with funding requirements; quickly approaching deadlines for certain funding opportunities; and the limited direct opportunities for natural gas utilities.

12 Specifically in response to the prevailing wage requirement, LiUNA provided comment during the workshop offering the wage requirement should not be viewed as a barrier as there is little difference in Washington state prevailing wage law[8] from the Federal law.[9]

E. Energy Infrastructure Reinvestment Program

13 The Energy Infrastructure Reinvestment (EIR) program is administered by the Department of Energy's (DOE) Loan Program Office to finance projects that reinvest in existing U.S. energy infrastructure to support the clean energy future. During the workshop, Rocky Mountain Institute (RMI) provided context for project eligibility and program requirements. Specifically, RMI identified the $100 million threshold is not project specific but allows for a portfolio of projects, does not contain the innovation requirement as other IRA and IIJA opportunities, and is available for refinancing of existing projects at lower rates. RMI advised that the new loan authority authorized in the IRA (Title 17 section 1706) must be committed by September 2026.

14 The electric utilities, given the additional context provided by RMI, affirmed during the workshop discussion that the EIR program is viable. Further, several utilities are already in preliminary discussions with the DOE Loan Program Office. While the interest rate is a set formula, PacifiCorp cautioned that the final rate is not known in advance of or at the time of application.[10] However, PacifiCorp and RMI also recognized potential savings as the EIR program fees are typically less than other debt facilities.

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[8] The Prevailing Wages on Public Works Act under RCW 39.12.

[9] The Davis-Bacon and Related Acts 40 U.S.C. 3141 et seq.

[10] The interest rate is the U.S. Treasury curve, plus a liquidity spread equal to three-eighths (0.375%), plus a risk-based charge. It is the risk-based charge that the Commission believes PacifiCorp was primarily addressing in their comments.

F. Resource Planning and Equity

15 Generally, the utilities provided confirmation, both in written and verbal comment, that known ITC and PTC tax credits are included in their resource planning models. Several utilities indicated that at the time the 2023 Integrated Resource Plan Progress Report was under development, the necessary guidance and supporting programs were not fully developed for meaningfully incorporating more robust analysis.

16 In responding to the 2025 IRP and CEIP development, the utilities provided a variety of potential approaches for including the IRA and IIJA benefits in their planning processes. Some of these considerations include building incentive pricing into supply side resources, incorporating benefits into conservation potential assessments for demand side resources, updating adoption forecasts for various technologies and programs (electric vehicles, distributed energy resources, energy efficiency), and the extension of the ITC and PTC tax credits.

17 Specifically for natural gas utilities, the concern regarding pending IRS guidance related to Section 45V and 48 may impact the magnitude of renewable fuels for both supply and demand side modeling. However, the utilities continue to evaluate how the IRA and IIJA may reduce the costs associated with the state's decarbonization goals.

18 The workshop discussions also indicated that the rebate programs offered under the State Energy Office, customer uptake of those opportunities, and incorporating the competitive funding opportunities are difficult to value during the planning process. PacifiCorp commented that specific projects will not be known until further downstream in the procurement process. However, RMI countered that resource plans are no longer least cost if they do not incorporate all IRA and IIJA opportunities within the assumptions.

G. Equity Considerations

19 Two themes emerged during workshop discussions related to equity considerations. First, utilities believe energy burden will be reduced by the offsetting rate impacts of the IRA and IIJA benefits. Second, the utilities are leveraging the Community Benefit Plans (CBPs),[11] required for most IRA and IIJA applications, to evaluate service territory needs for both planned and future projects. Specifically, Avista noted it is overlaying DOE

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[11] Community Benefit Plans explain how the applicant has or will engage with community stakeholders and workers and how its project will support local needs. CBPs are based on a set of four core policy priorities: (1) engaging communities and labor; (2) investing in America's workers through quality jobs; (3) advancing diversity, equity, inclusion, and accessibility through recruitment and training; and (4) implementing Justice40, which directs 40 percent of the overall benefits of certain Federal investment to flow to disadvantaged communities. The CBP accounts for 20 percent of the technical merit points in the application. These plans become legally binding agreements once an applicant is awarded a grant.

Justice40 mapping with Washington state mapping to help in its decision-making processes.[12]

H. Treatment of Rebates and Tax Credits

20 Utility comments were generally aligned regarding the treatment of rebates and tax credits. The utilities believe that savings from the tax credits and rebate programs can be claimed and should be included in cost-effectiveness tests, specifically the Total Resource Cost (TRC) test and participant cost test but that it is not appropriate to include for the Utility Cost Test (UCT) and ratepayer impact tests which, as PacifiCorp identified, aligns with the National Standard Practice Manual (NSPM) guidance.[13]

21 Both electric and natural gas utilities commented that efficiency savings that align with current programs in their approved conservation potential assessments will naturally flow through to Energy Independent Act (EIA) electric savings targets. However, utilities do not intend to include fuel-switching savings for their natural gas targets. When asked about accounting for incremental savings spurred by these new federal programs, utilities seemed to agree that they are considering this, but would only claim the incremental savings above baseline.

22 Additionally, the utilities reiterated that quantifying the rebate benefits is significantly more challenging than the tax credits. Avista noted the need for a better methodology to calculate those customer savings but theorized that assumptions can be based on the best available information. Further, Avista identified that if multiple entities beyond utilities are claiming federal savings, then a process to avoid double counting those benefits may be necessary.

III. STATEMENT OF COMMISSION POLICY

A. Preliminary Remarks

23 The Commission extends its appreciation to all participants that provided feedback either through workshop participation or written comment. Regulated energy companies are actively engaging in their 2025 IRP processes that will inform the CEIP, capital investments, and strategies for compliance with both the CETA and CCA. At the same time, utilities are facing dynamic challenges such as grid reliability and resiliency, cyber security, energy conservation efforts, transmission system limitations, and changing market structures. The Commission believes it is important to simultaneously analyze all opportunities to mitigate customer rate impacts for both legislative compliance and

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[12] The Commission recognizes that federal funding prioritizes the Justice40 Initiative while state funding focuses on Highly Impacted Communities, Vulnerable Populations and Low-Income customers.

[13] National Standard Practice Manual - NESP (nationalenergyscreeningproject.org).

business as usual activities. The federal programs offered under the IRA and IIJA provide such an opportunity.

24 This policy statement provides the Commission's explicit preference for regulated energy companies to pursue all appropriate federal and state funding in their planning, procurement, and acquisition functions. Additionally, utilities should evaluate all federal and state programs for the benefit of clean energy policies of this state, that promote the equitable distribution of energy and non-energy benefits, and the reduction of energy burden. The Commission appreciates the IRA and IIJA funding opportunities require considerable effort to research and apply for viable programs, however, these funding opportunities have limited timeframes reinforcing the need for utilities to act now.

B. Pursuing Funding Opportunities

25 Regulated energy companies are expected to evaluate each IRA and IIJA program to determine their viability and subsequently submit applications for funding where analysis indicates benefit to Washington customers. Utilities should prioritize funding opportunities based on overall needs and carefully consider which programs align with system needs, state policy, and strategic objectives. Further, utilities should evaluate the combination of tax credits, grant opportunities, and potential value of stacking funding opportunities that provide the greatest benefit. This includes the potential use of transferable tax credits and an assessment of the EIR loan program as a potential alternative for financing capital investments, including transmission capacity needs.

26 To do this, it is critical to have the project management structure and steering committee in place, with a core team identified to develop grant proposals, including technical experts across utility functions (engineering, acquisition, community relations, human resources, and labor relations, etc.). Having executive and project teams in place is necessary for the utility to justify initial application development, consider potential stacking of awards, make decisions, and implement project execution and reporting.[14]

27 Utilities must be prepared to demonstrate, with contemporaneous documentation, evaluation of IRA and IIJA funding opportunities. As an initial threshold, utilities shall evaluate a project or portfolio of projects which equate to 0.5 percent of annual utility revenues as reported in their most recent Commission Basis Report for possible IRA and IIJA funding opportunities. A utility may recommend an alternative threshold but must provide cost benefit analysis, including appropriate non-energy benefits, and thorough justification as part of a Multiyear Rate Plan filing. More information is provided in Section D of this policy statement.

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[14] Five Keys to Successful IIJA and IRA Applications - ScottMadden.

28 Although some of the gas utilities have not identified any IRA or IIJA programs to pursue, and await further IRS guidance, the expectation of documentation outlined above will enable the Commission and other interested parties to monitor the utilities' commitments to explore viable options.

29 Finally, while we address IRA and IIJA opportunities within the context of existing planning and ratemaking proceedings, we strongly encourage utilities to seek funding opportunities that may not squarely fit within those filings or the timing of those filings. This is expected to be an ongoing effort to maximize federal funding benefits to provide benefit to customers in advancing the energy policies of Washington state.

C. IRA and IIJA in Utility Planning

i. Integrated Resource Plans

30 Utilities are expected to update IRP cost assumptions to include the extended ITC and PTC tax credits through the current expiration date, incorporate the "bonus" credits[15] where appropriate, and include sensitivity analysis for varying level of program uptake (*e.g.*, electric vehicle adoption, distributed energy resources, building electrification, energy efficiency, etc.). This includes natural gas utilities reflecting the impact of these federal funding dollars that may promote electrification into their load forecasts. While we recognize the rebate programs for electric utilities are more difficult to forecast, scenarios should be included to evaluate a high, medium, and low uptake to better inform project selection downstream during development of the utilities' CEIPs, and the following procurement and acquisition processes when data from rebate programs becomes available.

31 Additionally, we expect electric utilities to identify and evaluate transmission needs that may qualify for IRA transmission-related programs.[16] We also encourage utilities to evaluate alternative options such as clean repowering[17] and reconductoring.[18]

32 Further, utilities should include an index within the IRP to notate where IRA and IIJA opportunities are included within its analysis. We believe the public benefit of

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[15] These bonus credits, also known as adders, include a domestic content bonus (10 percent), energy community credit (10 percent) for projects located within federally designated areas, and for projects located within a low-income community (10-20 percent).

[16] The Grid Deployment Office at the DOE maintains a website containing a variety of resources for transmission grant and financing opportunities. *See* Funding Opportunities and Requests for Information | Department of Energy.

[17] *See* https://rmi.org/how-utility-regulators-can-unlock-12-7-billion-in-annual-savings-for-customers/.

[18] *See* Reconductoring US power lines could quadruple new transmission capacity by 2035: report | Utility Dive.

documenting this information to facilitate review by the Commission, advisory groups, and other interested persons outweighs the burden the requirement may impose on utilities.

33 Finally, utilities are encouraged to review the RMI publication, *"Planning to Harness the Inflation Reduction Act: A Toolkit for Regulators to Ensure Resource Plans Optimize Federal Funding,"* as 2025 IRPs are under development.[19] In addition to the recommendations provided, the report provides extensive resources and literature references that utilities and interested parties may find useful. The Commission finds this resource helpful for utilities to reevaluate their IRP assumptions considering this unprecedented federal funding.

ii. Clean Energy Implementation Plans

34 As the CEIP is informed by the IRP, provides specific actions, begins to identify specific resources, evaluates Customer Benefit Indicators (CBIs), and analyzes equity issues, it is reasonable that utilities should be continuing their IRA and IIJA analysis within these filings. The Commission also expects the analysis performed within the IRP and subsequent CEIP will facilitate a procurement process that maximizes the potential IRA and IIJA benefits.

35 There are six general areas of the CEIP: (1) Targets, (2) Customer Benefit Indicators, (3) Specific Actions, (4) Cost, (5) Public Participation, and (6) Reporting. Each area should contain information related to the IRA and IIJA funding opportunities.

36 First, utilities should include a narrative within the Targets section explaining how the IRP assumptions related to potential IRA and IIJA funding sources helped inform the utility targets. Specific targets for energy efficiency and demand response should include increased potential from additional end uses resulting from federal funding of building and transportation electrification.

37 Second, the CBI section, which also contains equity analysis, should include a comparison of the Justice40 and Washington state geographical similarities. This analysis may assist in the identification of service territory areas to leverage federal funding. Further, the narrowed geographical footprint will help utilities develop a Community Benefit Plan for IRA and IIJA applications and pinpoint communities for utility outreach and potential project development.

38 Third, the Specific Actions section of the CEIP should contain specific resources or projects the utility is evaluating for IRA and IIJA funding opportunities. The Commission considers the development of Specific Actions as a significant moment in the planning process where it may be prudent to consider grants, tax benefits, and other funding

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[19] RMI's report may be found at Planning to Harness the Inflation Reduction Act - RMI.

opportunities. A narrative should be included describing the utility's evaluation, cost benefit analysis, and identification of projects for which the utility intends to seek funding.

39 Fourth, the Cost section should include the range of potential IRA and IIJA dollar benefits given the specific actions identified by the utility. This is expected to be net benefits after accounting for any required matching funds.

40 Fifth, the Public Participation section should include a narrative regarding the utility's efforts in educating its advisory groups about IRA and IIJA funding opportunities, and sharing such information during public engagement opportunities and with community groups. As discussed further in Section E of the policy statement, utilities need not wait until projects are identified to communicate, specifically with disadvantaged communities and vulnerable populations, about their needs in the transition to clean energy.

41 Finally, in the Tracking and Reporting section of the CEIP, utilities shall submit an inventory of IRA and IIJA opportunities. A template is provided in Appendix A to this policy statement for utilities to use in their CEIPs. This template is expected to be completed in its entirety and will be a living document for other filings as discussed in Section D below.

D. IRA and IIJA Evaluation in Multi Year Rate Plans

i. Utility Business Process to Monitor Funding Opportunities

42 The Commission finds that coordinated monitoring and well-defined business processes are required to maximize the benefits of these federal funding opportunities. In reviewing utility comments and hearing discussion at the workshop, the Commission appreciated Avista's approach with a dedicated staff for oversight of the funding opportunities, as well as their robust business and approval process. Other utilities are encouraged to establish a similar approach within the context of their own organizations. Each utility, either in the multiyear rate plan filing currently before the Commission, or in their next rate plan filing, should include an update as to their primary staff responsible for monitoring funding opportunities and a description of their strengthened business process in an effort to maximize internal utility coordination.

ii. Reporting of Funding Opportunity Analysis

43 An IRA and IIJA update should be included as part of each utility rate plan filing. This should include the template described in Section C(ii), submitted applications as exhibits to the filing, a description of the utility's evaluation of opportunities subject to the threshold in Section B of this policy statement, and information about awarded benefits. The information provided is expected to be transparent and thoroughly detailed as part of the utility's direct rate case filing to allow interested parties an opportunity to review, ask clarifying questions, and provide their own analysis in response testimony. Further, the template should be updated and submitted as part of each utility's annual provisional capital review filing as ordered in the respective rate proceeding final orders.

iii. IRA/IIJA Utility Incentive

44 The Commission recognizes that utility resources are required to pursue these benefits on behalf of their customers. The full range of opportunities include fully funded projects, grants with matching components, and projects that may benefit a specific subset of customers to promote equitable access to clean energy. Utilities have raised the issue that capital planning may need to be diverted, or projects may not be feasible, given the matching requirements. While we leave the final decision of whether to pursue individual grant opportunities to the utility's cost benefit analysis and internal decision making, we also find these efforts can be recognized and further promoted by implementing a financial incentive.

45 As discussed above, many if not most of the federal funding requires a matching component. To ensure appropriate incentive for pursuing funding opportunities, in the event a utility is awarded such a grant, the Commission will provide an equity incentive of 50 basis point for the matching funds.[20] For example, if a $1 million award is received but requires a 50 percent match, the utility will earn an additional one-half percent return on equity above the currently authorized rate for the $500,000 of matched funds.

46 We recognize this is not a perfect solution to measure utilities' effort in pursuit of funding but believe it is nearly impossible to set a reasonable target. For example, these grants are understood to be significantly competitive and there is no guarantee of an award. Further, some funding opportunities provide grants that cover the full cost of a project, and the full benefit then falls to the customer. The Commission provides this initial incentive to both promote utility pursuit of these opportunities by recognizing these efforts financially. However, as indicated in the Performance Based Regulation (PBR) proceeding in Docket U-210590, utilities and other parties have a mechanism by which to put forth other incentive concepts.

47 Finally, while we do not believe it is appropriate to include a penalty component as part of the IRA/IIJA Incentive, this does not alleviate any consequences for utilities that fail to put forth sincere efforts in seeking IRA and IIJA funding opportunities. Within rate proceedings, utilities continue to bear the burden of proof that utility investments and their associated costs are prudently incurred.

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[20] A 50 basis point incentive is one-half of a percent (0.5%). If a utility's authorized return on equity is 9.5 percent, then the incentive for the matched funds is calculated at 10.0 percent.

E. Collaboration and Partnerships

48 Collaboration with the State Energy Office, utility advisory groups, community based organizations, and federal program offices are likely to play a significant role in successful applications. Further, education of utility customers and suppliers regarding the available tax incentives and rebate programs increases the likelihood of customer uptake of qualifying programs. Utilities are strongly encouraged to have these conversations now. Understanding the needs of the communities being served will not only help develop better Community Benefit Plans but will assist the utilities in selecting the resources that best fit the communities' needs.

49 In addition to proactive customer and community communications, utilities are encouraged to follow up with federal program offices for unsuccessful bids to learn how they may improve future submissions. Utilities are also encouraged to reach out to award recipients to learn what information or procedural gaps may exist for future submissions.

IV. CONCLUSION

50 The Commission issues this Policy Statement pursuant to RCW 34.05.230 and WAC 480-07-920. This statement contains guidance related to the expectations and preferences for utility monitoring, analysis, evaluation, and reporting of the IRA and IIJA funding opportunities. Additionally, we find a performance incentive mechanism appropriate to better support utility actions to realize these time sensitive benefits. As provided in RCW 34.05.230, this Policy Statement does not constitute an order binding upon either the Commission or the parties that may come before it in current or future formal proceedings, nor is this Policy Statement an enforceable rule.

DATED at Lacey, Washington, and effective May 3, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

MILT H. DOUMIT, Commissioner