

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

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

Respondent.

DOCKETS UE-230172 and
UE-210852 (Consolidated)

In the Matter of

ALLIANCE OF WESTERN ENERGY
CONSUMERS'

Petition for Order Approving Deferral of
Increased Fly Ash Revenues

POST-SETTLEMENT BRIEF ON BEHALF OF COMMISSION STAFF

February 2, 2024

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I. INTRODUCTION

1 This brief addresses the settlement agreement reached by PacifiCorp, Commission Staff (Staff), AWEC, NWEA, TEP, and Walmart. The Sierra Club and the Public Counsel Unit of the Attorney General’s Office (Public Counsel) did not join the settlement and only Public Counsel contested the settlement at the hearing held on January 12, 2024. During that hearing, Public Counsel contested whether the settlement had sufficient evidentiary support in general and specifically questioned whether the settlement’s equity-related provisions were sufficient to meet the equity requirements of RCW 80.28.425.¹ Public Counsel’s cross examination during the hearing indicated that its core criticism of the settlement’s equity-related provisions is that the stipulated conditions do not ensure that PacifiCorp will implement improvements to equity during the immediate MYRP.² Staff agrees with Public Counsel that PacifiCorp’s foundational equity work³ is not complete. However, Staff does not believe this warrants rejecting or conditioning the approval of the Settlement. Staff fully supports the settlement and recommends that the Commission approve it without condition.

II. BACKGROUND

2 A full understanding of the settlement reached in this case requires a short discussion of the Company’s 2021 Clean Energy Implementation Plan (CEIP). PacifiCorp’s first CEIP was approved by commission order on October 23, 2023, after the parties in that case reached a settlement. In that order, the Commission noted that “[g]iven the timing of the Settlement Agreement, many of these conditions are appropriately focused on the July 2024 Progress Report and the 2025 CEIP filing, instead of requiring a re-filing of the present

¹ Public Counsel, TR 203:1-3.

² Public Counsel, TR 204:19-25 (“Just to clarify, those things are forward-looking; right? They don't address the current rate increase that would go into effect on March 1st?”).

³ This term is defined in III.B.2., below.

CEIP or extensive changes in the Biennial Update due in November 2023.” Many of the conditions in the approved settlement are aimed at gathering the information necessary to determine an equitable distribution of benefits and burdens, as required under CETA.⁴ PacifiCorp’s 2021 CEIP order therefore contemplated that PacifiCorp would work on these equity-related improvements to the Company’s equity analysis until October of 2025.⁵

3 Recent GRCs decided prior to the filing of the current rate case also provide important context. The Commission approved settlements in the 2022 Avista and PSE GRCs. Both settlements contained terms related to incorporating equity into each IOU’s capital planning process that are comparable to the conditions included in the settlement reached in this case.⁶ The Commission approved both settlements with conditions in final orders issued in December of 2022.⁷

4 PacifiCorp initially filed the current general rate case on March 17, 2023. Due to issues with the initial filing, the Company refiled on April 19, 2023, and the Commission accepted this refiling and set April 19, 2023 as the initial filing date.⁸ Staff filed response testimony on September 14, 2023. In that response testimony, Staff concluded that the Company’s direct case did not sufficiently prove that the MYRP had properly considered equity-related issues.⁹ Staff made three recommendations that would resolve this shortcoming and improve the Company’s efforts in advancing equity. First, Staff

⁴ *Wash. Utils. & Transp. Comm’n v. Pac. Power & Light Co.*, Docket UE-210829, Order 06, Appendix A, Settlement Stipulation, at 6 (CBI conditions 2 and 3), 9 (CBI Condition 13), 12-14 (interim target condition 7, miscellaneous condition 3) (Oct. 25, 2023) (PacifiCorp 2021 CEIP Order).

⁵ WAC 480-100-640(1).

⁶ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy Inc.*, Docket UE-220066, Final Order 24/10, p. 70, ¶¶ 229-30 (Dec. 22, 2022) (PSE 2022 GRC Order); *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE-220053, UG-220054, UE-210854, Final Order 10/04, p. 27, ¶¶ 76 - 28, ¶ 78 (Dec. 12, 2022) (Avista 2022 GRC Order).

⁷ *Id.*

⁸ *See generally*, *Wash. Utils. & Transp. Comm’n v. PacifiCorp*, Docket UE-230172, Order 01 (May 2, 2023).

⁹ Brewer, Exh. MAB-1T at 20:17-21:21.

recommended the Company develop a distributional equity analysis (DEA) and incorporate that analysis into its capital planning process by the end of the two year MYRP.¹⁰ Second, Staff recommended that PacifiCorp “develop benefits and costs . . . related to equity for use in its transmission and distribution capital planning framework.”¹¹ Staff’s final recommendation was that the Company “develop customer-focused system evaluation thresholds that reflect disproportionate impacts on particular circuits or census tracts.”¹²

5 The settling parties reached a partial multiparty settlement in principle in this case on December 6, 2023, filing the stipulation and joint testimony in support of the settlement on December 15, 2023. The settlement included the following conditions:

The Company will develop a distributional equity analysis (DEA) to be used alongside the traditional benefit-cost analysis in the capital planning process for capital projects that are situs-assigned to Washington. The Company will submit a compliance filing at the end of the MYRP demonstrating that this DEA has been incorporated into the capital planning process for capital projects situs-assigned to Washington. This DEA may be modified in response to Commission guidance on DEA. PacifiCorp shall participate in the DEA workshops within the Commission’s equity docket.¹³

PacifiCorp will develop benefits and costs (with associated weights where applicable) related to equity for use in its planning framework for distribution capital projects situs-assigned to Washington. The Company must, at minimum, collaborate with its Equity Advisory Group (EAG), Integrated Resource Plan Advisory Group, and its customers, particularly in Named Communities. Engagement with these groups will occur at least at the “Collaboration” level on the International Association for Public Participation Spectrum. New benefits and costs should reflect the tenets of energy justice described in the Cascade General Rate Case Order. At minimum, these benefits and costs should include, but are not limited to, societal impacts, non-energy benefits and burdens, and the social cost of greenhouse gases, as well as any other benefits and costs deemed appropriate after engagement with PacifiCorp’s advisory groups and customers.¹⁴

¹⁰ *Id.* at 25:11-12.

¹¹ *Id.* at 29:15-17.

¹² *Id.* at 32:5-6.

¹³ Settlement Stipulation at 7, ¶ 18.

¹⁴ *Id.* (citations omitted).

These terms are modified versions of Staff’s first and second recommendations in Staff witness Brewer’s response testimony. The terms differ in that they limit the DEA and cost/benefit assessment to projects situs-assigned to Washington. The settlement also did not include Staff’s recommended condition related to system evaluation thresholds.

III. DISCUSSION

A. The settlement is lawful, supported by the record, and consistent with the public interest.

6 The settlement’s terms are equitable and result in rates that appropriately balance public needs with the financial well-being of the company. The record contains ample evidence supporting these terms and demonstrating that they are consistent with the public interest.¹⁵ For these reasons, the Commission should approve the settlement without condition.

1. Legal Standard

7 The Commission will approve a settlement “when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.”¹⁶ In a general rate case, “the Commission must balance the needs of the public to have safe, reliable, and appropriately priced service with the financial ability of the utility to provide that service.”¹⁷ The rates set by the Commission must be equitable, fair, just, reasonable, and sufficient.¹⁸ Under WAC 480-07-700, the Commission “supports parties’ informal efforts to resolve

¹⁵ At the settlement hearing, some witnesses made statements indicating that the evidentiary support for the settlement was limited to the joint testimony in support of the stipulation. *See* TR 202:22-25; 217:12-15; 237:20-23. However, the settlement is supported by the entire record, not only by the joint testimony in support of the stipulation. *See* Judge Howard, TR 194:7-13 (noting that the vast majority of the exhibits other than the settlement stipulation and joint testimony in support were already admitted).

¹⁶ WAC 480-07-750(2).

¹⁷ Avista 2022 GRC Order at 11, ¶ 40.

¹⁸ *Id.*

disputes without the need for contested hearings when doing so is lawful and consistent with the public interest.”

2. Discussion

8 Because the procedural schedule set after the settlement in principle did not include time for prefiled testimony in opposition to the settlement, the specifics of Public Counsel’s opposition to the settlement are not known in detail. While it is clear from the evidentiary hearing that Public Counsel finds the equity-related conditions in the settlement insufficient, there are likely other aspects of the settlement opposed by Public Counsel that were not addressed in cross-examination. Staff will therefore discuss generally why it believes that the settlement is in the public interest and is supported by an appropriate record.

a. The settlement is in the public interest

9 A comparison between Staff’s litigated positions and the terms of the settlement reveals that this settlement is equitable, fair, just, reasonable, and sufficient. In terms of overall revenue requirement over the course of the two year rate plan, the settlement is \$10.4 million lower than the revenue requirement Staff proposed in response testimony.¹⁹ The Commission should also note that the settlement’s overall revenue requirement includes the Company’s litigated position on the net power cost forecast.²⁰ Should the Commission agree with any of the positions on the net power cost forecast put forward by the noncompany parties, the overall revenue requirement would be even lower. In terms of the settlement’s non-revenue requirement items, the settlement reflects Staff’s litigated positions on reporting benefits the Company receives under the federal Inflation Reduction Act (IRA) and Infrastructure Investment and Jobs Act (IIJA), the MYRP annual review of provisional

¹⁹ Joint Testimony in Support of the Settlement Stipulation at 24:11-17.

²⁰ Settlement Stipulation at 4, n. 8.

pro forma capital, seasonal rates, and (with the exception of a change in the earnings test) the decoupling mechanism. These terms of the settlement are in the public interest for the reasons outlined both in the joint testimony supporting the settlement and in Staff's response testimony covering these issues. Other non-revenue requirement terms represent a reasonable compromise given the party's litigated positions. Given the substantial overlap between Staff's litigated positions and the terms of the settlement, Staff believes that the settlement is in the public interest both in terms of the overall revenue requirement and the nonrevenue requirement conditions.

b. The settlement is properly supported by the evidence in the record.

10 The record in this case contains substantially more evidence to support the settlement than is typical in a GRC settlement. General rate case settlements often occur even before response testimony is filed.²¹ In this case, ample supporting evidence is contained in the Company's initial testimony, response testimony, and the joint testimony in support of the stipulation. At the evidentiary hearing, Public Counsel asked witnesses whether the settlement was supported solely by the joint testimony.²² The witnesses gave varying answers to this question, some agreeing that they were relying solely on the joint testimony as support for approving the settlement. Public Counsel may argue in brief that given these responses, the Commission should only consider the stipulation itself and the joint testimony when considering whether to approve the proposed settlement. However, the responses provided to these cross examination questions are irrelevant. The Commission admitted into the record initial, response, cross-answering, and rebuttal testimony and exhibits. The

²¹ See e.g., *Wash. Utils. & Transp. Comm'n v. Cascade Natural Gas Corp.*, Docket UG-210755, Final Order 09 (Aug. 23, 2022) (Cascade GRC Order).

²² See TR 202:22-25; 217:12-15; 237:20-23.

Commission is required to consider the entirety of the evidence admitted into the record.²³

When considering a GRC settlement proposal, the Commission frequently cites exhibits and testimony other than the stipulation and joint testimony in support of the stipulation.²⁴ A witness's off-the-cuff response to cross examination does not change what evidence has been admitted into the record, or the Commission's duty to consider the entirety of the record when considering the settlement.

11 Given the evidence that has been admitted into the record, the proposed settlement has ample support. Each aspect of the stipulation is adequately supported by the record, either directly supported because that term was a party's litigated position,²⁵ or indirectly because the parties' positions on that issue demonstrate that the term reached by the settling parties is a reasonable compromise between the positions taken in previous testimony.²⁶

B. Public Counsel's equity-related criticisms are not sufficient to justify rejecting or conditioning the approval of the settlement.

12 At the evidentiary hearing, Public Counsel raised questions about the sufficiency of the equity-related terms in the settlement.²⁷ These concerns deserve to be given serious consideration in light of the Commission's guidance in the Cascade GRC Order. The Commission has made a strong commitment to transforming the regulation of electric and natural gas companies to directly and comprehensively address systematic harms and set general guidance for utilities that matched that commitment. Based on the cross examination at the evidentiary hearing, Public Counsel's main argument appears to be that PacifiCorp

²³ See e.g., Avista 2022 GRC Order at 11, ¶ 40 ("just, in that the rates are based solely on the record in this case following the principles of due process of law;").

²⁴ *Id.* at 57, ¶ 158.

²⁵ For example, the settlement's terms related to the MYRP annual review of provisional pro-forma capital and earnings test is supported by Staff's position in response testimony, McGuire, Exh. CRM-1T at 62:1-65:13.

²⁶ For example, the settling party's positions on cost of capital: Parcell, Exh. DCP-1T; Bulkley, Exh. AEB-1T.

²⁷ Public Counsel, TR 204:18-21.

has not conducted the equity assessments necessary to comply with the guidance in the Cascade GRC Order. More specifically, the Company has not completed the foundational equity work (a shorthand term defined below), and therefore the settling parties cannot demonstrate the equity impacts of the MYRP.

13 Staff believes that approving the terms of the settlement without condition is the best path toward addressing these concerns. Washington investor-owned utilities are still in the early days of implementing the MYRP statute and therefore a utility's progress towards completing its foundational equity work is sufficient at this preliminary stage. The equity-related conditions in the settlement pave the way for PacifiCorp to complete its foundational equity work and make concrete implementation proposals in its next CEIP and MYRP. Instead of approving the settlement with conditions, the commission order can set clear expectations for future filings. Utilities should be ready to begin implementing equity-related proposals and taking action to improve and achieve equitable outcomes in the next round of CEIPs and MYRPs.

1. Legal Standard

14 Evaluating equity in an electric utility's MYRP requires a review of the equity requirements of both CETA and the MYRP statute. Under CETA, RCW 19.405.040(8) requires that electric utilities "ensure that all customers are benefiting from the transition to clean energy: Through the equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and highly impacted communities." The adoption order implementing rules for CEIPs and IRPs stated that the purpose of that subsection is "to prioritize vulnerable populations and highly impacted communities that experience the greatest inequities and disproportionate impacts, and that have the greatest

unmet needs.”²⁸ The Commission found that RCW 19.405.040(8) is an affirmative mandate.²⁹ This means that the clean energy transition must actually achieve equitable distribution over the course of the transition, not just plan to achieve it. Consistent with that interpretation, the Commission issued rules that made clear that CETA compliance is at issue in an electric utility’s general rate case.³⁰ Given that the equity requirements in CETA are an affirmative mandate, review of an electric utility’s MYRP proposal must take those requirements into account.³¹

15 RCW 80.28.425(1) states that “[i]n determining the public interest, the commission may consider such factors including, but not limited to, environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity, to the extent such factors affect the rates, services, and practices of a gas or electrical company regulated by the commission.” In the Cascade GRC Order, the Commission clarified that an assessment of a MYRP must include equity considerations.³² The Commission discussed using an equity lens to evaluate proposals based on the four tenets of energy justice³³ and made its expectations clear that companies “should be prepared to provide testimony and evidence to support their position. Meeting this expectation will require a comprehensive understanding of the ways in which systemic

²⁸ *In the Matter of Adopting Rules Relating to Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act*, Dockets UE-191023 & UE-190698, (Consolidated), General Order 601, p. 20, ¶ 47 (Dec. 28, 2020) (Adoption Order).

²⁹ Adoption Order at 19, ¶ 44.

³⁰ WAC 480-100-665(2)(c): “The commission may take enforcement action in any proceeding in which the utility's compliance with the provisions of chapter 19.405 RCW, this chapter of the commission's rules, or a commission order implementing those requirements is at issue including, but not limited to, the utility's general rate case.”

³¹ Staff does not suggest here that the accounting for those requirements must be explicit. For example, in most cases it would be unnecessary for a commission order on electric utility MYRP to assess CETA equity compliance because of the substantial overlap of those requirements with equity under the MYRP statute.

³² Cascade GRC Order, pp. 16-17, ¶ 52.

³³ *Id.* at 18, ¶ 56.

racism and other inequities are self-perpetuating in the existing regulatory framework absent corrective intervention.”³⁴

16 The Commission has approved two GRC settlements under this standard: the 2022 PSE and Avista GRCs. Commission orders approving settlements are not precedential. However, a brief review of these decisions broadly illustrates the Commission’s standards for equity in implementing the MYRP statute at this phase and, to the extent the Commission finds the circumstances in the current case comparable, it may find the comparison persuasive. In the PSE GRC, the Commission approved a settlement that included equity-related terms comparable to the ones included in the proposed settlement in this case.³⁵ The same was true for the Avista GRC Order.³⁶ When considering the equity-related terms in the Avista GRC order, the Commission concluded that the equity-related terms in that settlement “will provide an opportunity for Avista to demonstrate its progress towards addressing the principles identified in the Cascade Final Order, and in particular a comprehensive understanding of the ways systemic and historical inequities are present and continue to operate.”³⁷ In the PSE case, the Commission found that the equity terms in that settlement “take[] appropriate first steps to incorporate equity into PSE’s corporate capital planning.”³⁸

17 While the equity standards under CETA and MYRP are different, they also overlap to a large extent. One common trait is that both require the utility to have a full understanding and analysis of current and historic conditions. Under CETA, an IOU must determine which Named Communities “experience the greatest inequities and

³⁴ *Id.* at 19, ¶ 58.

³⁵ PSE 2022 GRC Order, Appendix A, pp. 14-16.

³⁶ Avista 2022 GRC Order, Appendix A, pp. 9-10.

³⁷ *Id.* at 26, ¶ 73.

³⁸ PSE 2022 GRC Order at 70, ¶ 229.

disproportionate impacts, and that have the greatest unmet needs[.]” in order to prioritize those customers.³⁹ This assessment requires identification and designation of Named Communities, followed by outreach and collaboration with those communities in order to decide which actions the IOU should take to improve and achieve equity. Under RCW 80.28.425, recognition justice “requires an understanding of historic and ongoing inequalities and prescribes efforts that seek to reconcile these inequalities.”⁴⁰ In summary, both require a full understanding of historic and current conditions. That understanding must be comprehensive enough to identify Named Communities, identify those within Named Communities that have the greatest unmet needs, and identify the ways in which the current regulatory framework will perpetuate inequities absent intervention.

2. Discussion

18 The equity-related criticisms raised by Public Counsel during the evidentiary hearing do have some merit, but for the reasons outlined below, these criticisms do not warrant rejecting or conditioning the settlement. Public Counsel correctly recognizes that PacifiCorp has not completed the foundational equity work necessary to fully begin implementation actions with reasonable confidence that those actions will improve equity.⁴¹ But it does not follow that the Commission should therefore condition or reject the proposed settlement. Instead, the Commission should accept the settlement’s equity-related conditions as the best path forward for improving equity in PacifiCorp’s service territory. To explain this, we must first review the equity requirements under both CETA and RCW 80.28.425, and the steps necessary to successfully meet those requirements.

³⁹ Adoption Order at 20, ¶ 47.

⁴⁰ Cascade GRC Order at 18, ¶ 56.

⁴¹ Public Counsel, TR 204:18-21.

As a shorthand, this brief will collectively refer to a utility's efforts to establish a clear understanding of current and historic conditions, designate vulnerable populations, identify those with the greatest unmet needs, and any other work done prior to equity-related implementation actions as "foundational equity work" or "foundational equity analysis." This concept includes incorporating equity assessments into all decision-making processes and establishing the procedures necessary to ensure procedural justice. Another way of describing foundational equity work is that it is the work necessary to build the equity lens required to assess future proposals. This brief will also refer to "implementation actions," a shorthand for equity-related actions that are intended to directly improve distributional and/or recognition justice, or in the language of CETA, actions intended to directly impact the equitable distribution of cost and benefits. While no action or decision is equity-neutral, this term refers to actions or decisions where improving equity is a core consideration. As the record makes clear, PacifiCorp has not completed this foundational equity work. Staff was not shy about expressing disappointment with the Company's equity analysis as presented in the Company's initial filing.⁴² In its response testimony, Staff made three recommendations specifically tailored to cure the deficiencies in the Company's equity-related proposals. As noted in the background section above, the settlement agreement contains modified versions of two of Staff's three equity-related recommendations, requiring PacifiCorp (1) develop a distributional equity analysis in its capital planning process for capital projects and (2) develop benefits and costs related to equity for its planning framework for distribution projects. Public Counsel's criticisms of the equity-related terms

⁴² Brewer, Exh. MAB-1T at 21:11-21 ("The equity proposals in this case appear to be nothing more than verbal window-dressing draped over the Company's business-as-usual... PacifiCorp is not in the same position that Avista and PSE were in last year during their respective GRCs, as it had nearly seven months before filing this GRC to consider how it could comply with Commission guidance from the Cascade GRC Order.").

of the settlement may take two forms. First, Public Counsel may argue that the terms are legally insufficient given the guidance provided in the Cascade GRC Order. Second, it could argue that even if the terms are sufficient as a legal matter, they are not sufficient as a matter of policy. Each potential argument is addressed in turn.

a. The settlement’s equity-related conditions are legally sufficient.

20 The equity-related terms in the settlement are legally sufficient. As noted in the legal standard section above, Commission approval of settlements are not precedential, but the Commission may find the reasoning provided in past decisions persuasive. In the 2022 Avista and PSE GRCs, the Commission approved settlements that included equity-related conditions aimed at completing the foundational equity work over the MYRPs approved in those cases. While the Commission did alter the DEA conditions in those settlements, the modification was procedural, not due to the substance of the equity-related terms being legally insufficient. Demonstrating that a utility had fully completed the foundational equity work was not required. In these first MYRPs, progress toward completing the foundational equity work during the MYRP should be legally sufficient. This position is supported by the Commission’s approval of PacifiCorp’s 2021 CEIP settlement. In that settlement, the equity-related terms were focused on completing the foundational equity work as well.⁴³ As noted in the legal standard section, the CEIP and MYRP equity requirements are different, but there is a substantial overlap. Given that the CEIP and the MYRP both cover 2024 and 2025, it would be reasonable to conclude that settlement conditions similar in kind to what was approved in the CEIP should satisfy the equity standards under RCW 80.28.425 as well.

⁴³ See PacifiCorp 2021 CEIP Order, Appendix A, Settlement Stipulation, at 6 (CBI conditions 2 and 3), 9 (CBI Condition 13), 12-14 (interim target condition 7, miscellaneous condition 3).

b. The settlement's equity-related conditions are appropriate as a matter of policy.

21 Public Counsel may also argue that even if the equity-related terms are legally sufficient, they should be rejected or modified as a matter of policy. This position should be considered in light of the options available to the Commission. The fact that PacifiCorp's foundational equity work is incomplete leaves the Commission with two basic options, which are not mutually exclusive. First, the Commission could require that the Company complete the foundational equity analysis and set up all the necessary procedures for future cases. Second, the Commission could order the Company to take implementation actions prior to completing the foundational analysis in the hopes that those actions will nonetheless improve equity during the rate plan.

22 The proposed settlement includes elements of both of these options. Condition 9 of the settlement stipulation directly addresses equity issues and requires the Company to establish the processes necessary to assess equity going forward by the end of this two-year rate plan. The settlement also has conditions that, while not explicitly related to equity, are likely to have a positive impact on equity. For instance, condition 10 of the settlement stipulation—addressing requirements of PacifiCorp's low-income, language access and disconnection programs—will also have an indirect positive impact on equity during the rate plan. Although Staff believes that low-income requirements and equity-related requirements should be kept as analytically distinct and separate assessments, based on the record in this case, the Commission could reasonably conclude that condition 10's implementation actions will improve equity during the MYRP.

23 Because Public Counsel challenges the sufficiency of these equity-related settlement terms, presumably they intend to propose an alternative. Given that the foundational equity

work is not complete, it appears that the only other option available would be to order the Company to invest more time, effort, and money into similar “shot in the dark” implementation efforts.⁴⁴ Staff supports approving the settlement without condition because requiring the Company to invest additional money into such implementation efforts now would not be the best path forward for either the Named Communities or for ratepayers as a whole. The conditions contained in this settlement lay out the most direct and effective path towards concrete and substantial advancement in equity-related issues; they require PacifiCorp to complete its foundational equity analysis before its next rate case and provide the ground work for the Company to propose a full set of equity implementation actions in its next filing. Instead of requiring the Company to spend money on implementation efforts now, the Commission should instead approve the settlement without condition, with the expectation that the Company’s next MYRP will include significant equity-related implementation proposals. Spending the time and effort necessary to establish a robust foundational equity analysis now will ensure that future investments, expenses, and proposals meant to improve equity are efficient and effective.

C. The Commission should consider providing guidance on specific equity questions in the final order of this case.

24

In the course of this rate case, a number of unanswered questions were raised regarding equity in the context of RCW 80.28.425. The Commission need not address these questions in order to resolve the contested issues in this case, as Staff believes the settlement should be approved without condition regardless of the answers to these questions.

Nonetheless, the Commission should consider providing guidance on these issues. Doing so

⁴⁴ Note that even if the Commission rejected the proposed settlement in its entirety, that decision would not change the fact that the options described above remain the two basic pathways for improving equity in the short term.

would provide greater clarity regarding equity requirements and reduce the potential for unnecessary litigation in future rate cases. Staff has requested a meeting with PacifiCorp after the Commission issues a decision in this case to discuss equity requirements and future equity proposals from the Company. Any guidance provided in the order would inform that discussion.

25 First, a question was raised regarding the time period in which the equity requirements must be met. Staff's position on this issue was that the MYRP must sufficiently demonstrate that improvements to equity will be achieved during the rate years proposed in the plan itself, and that prior efforts to improve equity are irrelevant when determining whether the rate plan meets the equity standard in RCW 80.28.425.

26 Second, there appears to be some confusion regarding whether and how utility actions that are already required by statute or commission rule should be viewed when assessing equity. In other words, if a utility is required by law to take action, and that action appears to improve equity, should that action be considered when determining whether the IOU has met the equity requirements for an MYRP? Staff's position is that while specific actions described within a commission approved CEIP should be considered equity related, compliance with other laws and regulations generally should not. For example, compliance with RCW 80.28.425(2) would almost certainly have positive impact on equity, but this subsection is meant to address the energy burden of low income residential customers. Staff doubts that the legislative intent was that consideration of equity would be demonstrated by listing compliance with a variety of existing laws and regulations.

27 Finally, throughout this case there has been some conflation between equity and low income, and between equity and other more traditional ratemaking concepts. A statement from the Commission regarding whether these requirements and concepts should be analyzed and presented separately or together in future cases would be appreciated.

IV. CONCLUSION

28 The proposed settlement is lawful, well-supported by the record in this case, and consistent with the public interest. The Commission should approve the settlement without conditions, only making adjustments to account for the Commission's decisions on the fully litigated net power cost issues, if necessary. The equity conditions in the settlement are appropriate in light of the circumstances presented in this case, and should likewise be approved without condition. Full implementation of equity provisions cannot properly begin until the foundational equity work is complete. The equity conditions in the settlement are a pragmatic and appropriate in light of the options available to the Commission at this point. Finally, the Commission should consider providing guidance related to specific questions that this case raised related to equity and MYRPs. While answering these questions is not necessary to resolve the contested issues in this case, providing guidance would benefit parties in future rate cases.

Respectfully submitted,

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