

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

PACIFICORP d/b/a PACIFIC POWER
& LIGHT COMPANY'S

Renewable Energy Target Progress
Report under RCW 19.285.070 and
WAC 480-109-040

DOCKET UE-120813

ORDER 01

ORDER REGARDING 2012
RENEWABLE ENERGY TARGET

I. BACKGROUND

A. The Energy Independence Act

- 1 Washington voters approved Initiative 937, the Energy Independence Act (EIA), in the 2006 general election. Now codified in Chapter 19.285 of the Revised Code of Washington, it requires “qualifying” electric utilities, those with 25,000 or more customers, to obtain certain percentages of their electricity from new renewable resources, beginning in 2012. Under RCW 19.285.060(6), the Washington Utilities and Transportation Commission (Commission) has authority to enforce the EIA with respect to investor-owned utilities.¹
- 2 PacifiCorp d/b/a Pacific Power and Light Company (PacifiCorp) is an “investor-owned utility” subject to the Commission’s enforcement authority under the EIA. Because it serves more than 25,000 customers in Washington State, it is a “qualifying utility” under the EIA.²
- 3 Pursuant to the rule-making authority granted in RCW 19.285.080(1), the Commission has adopted rules to ensure the proper implementation and enforcement of the EIA as it

¹ RCW 19.285.030(11) defines “investor-owned utility” by reference to RCW 19.29A.010. RCW 19.29A.010(19) provides: “‘Investor-owned utility’ means a company owned by investors that meets the definition of RCW 80.040.010 and is engaged in distributing electricity to more than one retail customer in the state.”

² RCW 19.285.030(16).

applies to investor-owned utilities.³ Those rules are codified in Chapter 480-109 of the Washington Administrative Code.

4 WAC 480-109-020(1)(a) implements RCW 19.285.040(2)(a). It provides, “[b]y January 1 of each year beginning in 2012 and continuing through 2015, each [qualifying investor-owned] utility must use sufficient eligible renewable resources, acquire equivalent renewable energy credits, or a combination of both, to supply at least three percent of its load for the remainder of each year.” According to RCW 19.285.040(2)(c) and WAC 480-109-020(3), “annual load” is to be “based on the average of the utility’s load for the previous two years.” “Load” is defined in RCW 19.285.030(12) and WAC 480-109-007(12) to mean “the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers.”

5 RCW 19.285.030(18) and WAC 480-109-007(18) list nine types of “renewable resources,” such as wind energy. However, only “eligible” renewable resources meet the requirements of the EIA. As of June 6, 2012, “eligible renewable resource” was defined in RCW 19.285.030(10) to mean:

- (a) Electricity from a generation facility powered by a renewable resource other than fresh water that commences operation after March 31, 1999, where: (i) The facility is located in the Pacific Northwest;^[4] or (ii) the electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services; or
- (b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying utility and located in the Pacific Northwest or to hydroelectric generation in irrigation pipes and canals located in the Pacific Northwest, where the additional generation in either case does not result in new water diversions or impoundments.

³ *Rules to Implement the Energy Independence Act*, Docket UE-061895, General Order R-546 (Nov. 30, 2007). The rule adoption order is published in Issue 08-01 of the Washington State Register as WSR 07-24-012.

⁴ “Pacific Northwest” is defined in RCW 19.285.030(14) and WAC 480-109-007(15) by reference to the federal Pacific Northwest Electric Power Planning and Conservation Act. Section 3(14) of that act, 16 U.S.C. § 839a(14), defines “Pacific Northwest” to mean Washington, Oregon, Idaho, and Montana west of the Continental Divide, the remainder of the Columbia River basin south of Canada, and contiguous areas served by the Bonneville Power Administration.

In 2012, the Washington Legislature amended RCW 19.285.030(10) and other sections of the EIA to alter the extent to which biomass energy qualifies as an eligible renewable resource.⁵ Those amendments, which took effect on June 7, 2012, do not affect the 2012 compliance year.

- 6 RCW 19.285.070(1) establishes reporting requirements for utilities that are subject to the EIA:

On or before June 1, 2012, and annually thereafter, each qualifying utility shall report to the department [of commerce] on its progress in the preceding year in meeting the targets established in RCW 19.285.040, including . . . the utility's annual load for the prior two years, the amount of megawatt-hours needed to meet the annual renewable energy target, the amount of megawatt-hours of each type of eligible renewable resource acquired, the type and amount of renewable energy credits acquired, and the percent of its total annual retail revenue requirement invested in the incremental cost of eligible renewable resources and the cost of renewable energy credits. . . .

RCW 19.285.070(2) and WAC 480-109-040(1) require investor-owned utilities to report the same information to the Commission.

- 7 Under RCW 19.285.060(1), a utility that fails to meet an annual renewable energy target under RCW 19.285.040(2) must pay an administrative penalty of fifty dollars for each megawatt-hour of shortfall. WAC 480-109-040 describes the process that the Commission uses to evaluate investor-owned utilities' annual reports and to determine whether the utility complied with its renewable resource target.
- 8 The Commission has been planning for the 2012 renewable energy compliance deadline for several years. In 2010, the Commission conducted an inquiry to consider policy options for renewable energy, and issued a report.⁶ In 2011, the Commission issued a Policy Statement describing how the Commission, through its staff, would provide technical assistance to utilities and developers of renewable energy projects regarding whether electric generation projects may qualify as "eligible renewable resources" under

⁵ Laws of 2012, ch. 22. This Order 01 uses the RCW numbering in effect as of June 6, 2012.

⁶ *Report and Policy Statement Concerning Acquisition of Renewable Resources by Investor-Owned Utilities*, Docket UE-100849 (Jan. 3, 2011).

RCW 19.285 and WAC 480-109. The Commission authorized its staff to join with staff of the Washington Department of Commerce (Commerce) to establish an informal technical working group (TWG) to provide non-binding technical analysis as to whether a proposed technology or resource is an “eligible renewable resource.”⁷ The TWG issued several advisory letters between June 2011 and June 2012. They are posted on the Commerce website at <http://www.commerce.wa.gov/site/1001/default.aspx>. As described below, one of them affects this docket. The Washington Legislature has now authorized Commerce to issue advisory opinions to consumer-owned utilities regarding whether electric generation projects qualify as “eligible renewable resources.”⁸ That process has replaced the TWG process.

- 9 In 2011, in Docket UE-110523, Commission Staff convened a Renewable Portfolio Standards Workgroup (RPS Workgroup) to coordinate planning for the filing of utilities’ June 2012 reports. The RPS Workgroup included representatives from utilities, state agencies, and other interested groups. PacifiCorp participated in the RPS Workgroup. The RPS Workgroup reached some common understandings about the content and format of the June 2012 reports.

B. Incremental Hydropower as an Eligible Renewable Resource

1. Relationship Between Incremental Hydropower and Renewable Energy Credits

- 10 The EIA permits utilities to meet their renewable energy targets with either eligible renewable resources or renewable energy credits.⁹ RCW 19.285.030(17) defines “renewable energy credit”, or REC, as follows:

“Renewable energy credit” means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by fresh water, the certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity,

⁷ *Policy Statement Regarding Processes for Determining Whether Projects are “Eligible Renewable Resources” under RCW 19.285 and WAC 480-109*, Docket UE-111016 (June 7, 2011).

⁸ Laws of 2012, ch. 254, § 1 (codified at RCW 19.285.045).

⁹ RCW 19.285.040(2)(a).

and the certificate is verified by a renewable energy credit tracking system elected by [Commerce].¹⁰

- 11 A REC may be used only once, and may be applied to annual renewable energy targets. To meet an annual renewable energy target, a utility may use renewable energy credits that were produced during that year, the preceding year, or the subsequent year.¹¹
- 12 Under RCW 19.285.030(10)(b), incremental electricity produced as a result of post-March 1999 efficiency improvements at certain hydroelectric generation facilities is an “eligible renewable resource.” RECs, as defined in RCW 19.285.030(17), cannot be produced from electricity generated by fresh water, however. Thus, incremental hydropower can be used for compliance with the Washington EIA only in the form of megawatt-hours, and only in the year in which it is generated.
- 13 RECs, can be bought and sold in the energy marketplace.¹² Many states, including Oregon, have laws similar to the EIA. Like Washington, some states may allow RECs produced in another state to be used for compliance under their laws. Unlike Washington, some states permit RECs produced from freshwater generation facilities to be used for compliance.¹³ The EIA does not specify whether incremental hydropower that is used for compliance in another state, through RECs or otherwise, may also be used for EIA compliance in Washington. That potential for double-counting affects this docket.

2. Methods for Reporting Incremental Hydropower Under the EIA

- 14 The EIA does not specify how to measure or calculate incremental hydropower. The RPS Workgroup convened under Docket UE-110523 agreed on three optional

¹⁰ The Washington Department of Commerce has selected the Western Renewable Energy Generation Information System as the renewable energy credit tracking system under RCW 19.285.030(17). WAC 194-37-040(31); WAC 194-37-210. The Western Renewable Energy Generation Information System has a website at <http://www.wregis.org/>.

¹¹ See RCW 19.285.040(2)(e).

¹² See *WUTC v. Puget Sound Energy, Inc.*, 197 Pub. Util. Rep. (PUR) 4th 1, 68 (WUTC 2012) (treatment of revenues from REC sales).

¹³ For example, Oregon law permits RECs produced from some freshwater generation facilities to be used for compliance with Oregon’s Renewable Portfolio Standards legislation. OAR § 330-160-0015; see ORS §§ 469A.005(9); 469A.010, 469A.020. In Oregon, “REC” stands for “renewable energy certificate.” See ORS §§ 469A.130 - .150.

methodologies for calculating incremental hydroelectric efficiency improvements. Method 1 would require an annual calculation, based on actual water flows or generation during that year. Method 2 would also require an annual calculation, multiplying actual generation by a fixed percentage to determine the generation attributable to efficiency upgrades. It is similar to the method that the Oregon Department of Energy has adopted under that state's counterpart to the EIA.¹⁴ Method 3 would require a one-time calculation of the increase in annual megawatt-hours attributable to the efficiency upgrades under average historical water flows.

- 15 Qualifying utilities that are not investor-owned utilities are not subject to regulation by the Commission. Instead, the EIA requires such utilities to file reports with Commerce, and they are subject to compliance audits by the Washington State Auditor or an independent auditor.¹⁵ Commerce must adopt rules concerning “process, timelines, and documentation to ensure the proper implementation of [the EIA] as it applies to qualifying utilities that are not investor-owned utilities.” The rules that Commerce has adopted are codified in Chapter 194-37 of the Washington Administrative Code.¹⁶
- 16 WAC 194-37-130 and WAC 194-37-040 guide non-investor-owned utilities’ documentation of incremental hydropower. The information the rules require is similar to the information required under Method 3 developed by the RPS Workgroup for investor-owned utilities.

3. Upgrades at PacifiCorp’s Hydroelectric Projects

- 17 PacifiCorp owns and operates several hydroelectric projects in the western United States, including some in Oregon. Oregon is within the “Pacific Northwest,” as defined in RCW 19.285.030(14) and 16 U.S.C. § 839a(14). In the Rogue River watershed, PacifiCorp operates a series of dams and associated structures, including Prospect No. 2 Powerhouse, under a license issued by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act.¹⁷ PacifiCorp operates eight dams, including Lemolo Nos. 1 and 2, in the North Umpqua River watershed, under another license

¹⁴ See OAR § 330-160-0050.

¹⁵ RCW 19.285.030(2); RCW 19.285.060(7); RCW 19.285.070.

¹⁶ The rule adoption order is published in the Washington State Register as WSR 08-07-079.

¹⁷ *PacifiCorp*, 123 FERC ¶ 62,021 (2008); *Pac. Power & Light Co.*, 12 FERC ¶ 62,056 (1980).

issued by FERC.¹⁸ PacifiCorp operates a series of dams in the Klamath River watershed in Oregon and California, including J.C. Boyle dam in Oregon. PacifiCorp's application for a new license for the Klamath Hydroelectric Project is currently pending before FERC.¹⁹

18 Over time, PacifiCorp has performed upgrades at some of its hydroelectric facilities, such as rewinding generators and replacing turbine runners, that have increased the generation capacity of the facilities. FERC has amended PacifiCorp's licenses to increase the authorized installed generation capacity.²⁰ FERC has also certified incremental hydropower generation for a renewable energy production tax credit under the federal Energy Policy Act of 2005.²¹ For purposes of the production tax credit, incremental hydropower generation is calculated under a method similar to Method 3 developed by the RPS Workgroup, but expressed as a percentage of average annual hydropower production rather than as a megawatt-hour amount.²²

19 PacifiCorp sells electricity to retail customers in Oregon, and it is subject to the Oregon Renewable Portfolio Standards law.²³ PacifiCorp has developed a method for calculating incremental electricity from hydropower efficiency improvements that it has submitted to the Oregon Department of Energy for the Oregon Renewable Portfolio Standards program. PacifiCorp desires to use the same method for calculating incremental hydropower under the Washington EIA.

4. Fish Protection Measures at Grant County PUD's Wanapum Dam

20 Grant County Public Utility District (PUD), a qualifying utility that is not an investor-owned utility, operates the Priest Rapids Hydroelectric Project under a license issued by FERC.²⁴ The Priest Rapids Project includes two dams, Priest Rapids and Wanapum, both located on the Columbia River in central Washington State. The Mid-Columbia River is

¹⁸ *PacifiCorp*, 105 FERC ¶ 61,237 (2003).

¹⁹ *See generally Hoopa Valley Tribe v. FERC*, 629 F.3d 209 (D.C. Cir. 2010).

²⁰ *PacifiCorp*, 134 FERC ¶ 62,152 (2011) (Lemolo No. 2); *PacifiCorp*, 117 FERC ¶ 62,252 (2006) (J.C. Boyle Unit 2); *PacifiCorp*, 112 FERC ¶ 62,063 (2005) (J.C. Boyle Unit 1); *PacifiCorp*, 111 FERC ¶ 62,319 (2005) (Lemolo No. 1).

²¹ *PacifiCorp*, 115 FERC ¶ 61,267 (2006) (J.C. Boyle Unit 2).

²² 26 U.S.C. § 45(c)(8)(B).

²³ *See* ORS § 469A.052.

²⁴ *PUD No. 2 of Grant Cnty.*, 123 FERC ¶ 61,046 (2008).

home to various species of salmon and steelhead, some of which are federally listed as threatened or endangered.²⁵ The Federal Power Act license for the continued operation of the Priest Rapids Project requires Grant County PUD to replace the Wanapum Dam turbines with a more fish-friendly design less lethal to juvenile fish, and to install and maintain an external structure that allows juvenile salmon and steelhead to pass Wanapum Dam safely without going through the turbines. Before these measures were implemented, FERC required Grant County PUD to spill water over the dam during the months when juvenile salmon and steelhead are migrating downstream. Grant County PUD completed the external juvenile fish bypass structure in 2008.²⁶ Turbine upgrades are underway.

- 21 In May 2011, Grant County PUD and Chelan County PUD submitted an inquiry to the TWG, seeking advice about whether certain hydropower improvements would qualify as eligible renewable resources under the EIA. Grant County PUD explained that the juvenile fish bypass structure at Wanapum Dam enables it to allow more flow to go through the turbines, and to generate more electricity, because the PUD is no longer required to spill water over the dam for fish passage. In an informal analytic guidance letter dated June 30, 2011, the TWG responded that the juvenile fish bypass system at Wanapum Dam is a qualified incremental hydropower efficiency improvement under WAC 194-37-040(21) and WAC 194-37-130.
- 22 WAC 194-37-130 allows non-investor-owned qualifying utilities that generate incremental hydropower to sell that power to other utilities as an eligible renewable resource.²⁷ Grant County PUD has used some of the incremental hydropower attributable to the Wanapum Dam juvenile fish bypass for its own EIA compliance in 2012, and it has

²⁵ 50 C.F.R. §§ 223.102(a), 224.101(a).

²⁶ *PUD No. 2 of Grant Cnty.*, 123 FERC ¶ 61,046 (2008); *PUD No. 2 of Grant Cnty.*, 109 FERC 62,216 (2004); *PUD No. 2 of Grant Cnty.*, 108 FERC ¶ 62,075 (2004). See generally *Confederated Tribes & Bands of the Yakima Indian Nation v. FERC*, 746 F.2d 466 (9th Cir. 1984) (FERC must consider effects on fisheries before issuing licenses for mid-Columbia dams).

²⁷ See WAC 194-37-130(1)(a); WAC 194-37-130(3)(f); Wash. Dep't of Community, Trade, & Economic Development, *Concise Explanatory Statement, Chapter 194-37 WAC (Energy Independence Act, RCW 19.285)* at 12 (March 2008). The Commission did not address this issue in its EIA rulemaking.

sold some of the power to other utilities, including PacifiCorp, as an eligible renewable resource.²⁸

C. PacifiCorp’s Filings in this Docket

23 On June 1, 2012, PacifiCorp initiated this docket by filing with the Commission a Renewable Report under RCW 19.285.070 and WAC 480-109-040 (“RPS Report”). Using a reporting template developed by Commerce, PacifiCorp also submitted a Renewable Energy Report to that agency, and included a copy in the RPS Report it filed with the Commission. Based on its average annual load for 2010 and 2011, PacifiCorp reported that its 2012 renewable energy target was 119,857 megawatt-hours.

24 PacifiCorp submitted a corrected Renewable Energy Report to the Department of Commerce on July 6, 2012. On July 13, 2012, PacifiCorp filed the corresponding corrected pages in its RPS Report with the Commission.

25 PacifiCorp reported that it had acquired or contracted for an estimated 119,857 megawatt-hours of renewable energy or equivalent renewable energy credits to meet its 2012 target, as follows:

| Facility Name (Location) | Resource Type | Amount (MWh/ RECs) | Facility On-Line Date | Ownership/ Contract |
|------------------------------------|---------------|--------------------------|-----------------------------|------------------------|
| Goodnoe Hills (Goldendale, WA) | Wind | 18,896 RECs | 05/31/2008 | PacifiCorp- owned |
| Leaning Juniper (Arlington, OR) | Wind | 18,530 RECs | 09/14/2006 | PacifiCorp- owned |
| Marengo I (Dayton, WA) | Wind | 31,837 RECs | 08/01/2007 | PacifiCorp- owned |
| Marengo II (Dayton, WA) | Wind | 15,341 RECs | 06/28/2008 | PacifiCorp- owned |
| Bennett Creek (Elmore Cnty, ID) | Wind | 12,259 RECs | 09/30/2008 | Contract |
| Hot Springs (Elmore Cnty, ID) | Wind | 7,963 RECs | 09/30/2008 | Contract |
| Tuana Springs | Wind | 12,890* | 05/14/2010 | Contract |

²⁸ Grant County PUD’s Renewable Energy Report under WAC 194-37-110 is posted on the Commerce website at <http://www.commerce.wa.gov/site/1001/default.aspx>.

| | | | | |
|------------------------------------------|------------------------------|---------------|-----------------|----------------------------------|
| (Twin Falls Cnty, ID) | | RECs | | |
| Prospect 2 (Rogue River, OR) | Water (Incremental Hydro) | 252* MWh | Upgrade 1999 | PacifiCorp- owned |
| Lemolo 1 (N. Umpqua R., OR) | Water (Incremental Hydro) | 1,012* MWh | Upgrade 2003 | PacifiCorp- owned |
| Lemolo 2 (N. Umpqua R., OR) | Water (Incremental Hydro) | 88* MWh | Upgrade 2009 | PacifiCorp- owned |
| J.C. Boyle (Klamath R., OR) | Water (Incremental Hydro) | 64* MWh | Upgrade 2005 | PacifiCorp- owned |
| Wanapum Fish Bypass (Columbia R., WA) | Water (Incremental Hydro) | 725* MWh | Upgrade 2008 | Contract w/ Grant Cnty PUD |
| Total MWh + RECs Acquired | | 119,857 | | |
| 2012 Target (MWh) | | 119,857 | | |
| *RECs or MWh estimated for 2012 | | | | |

- 26 PacifiCorp reported that all of the RECs it had acquired for 2012 compliance had been produced in 2011 or would be produced in 2012.
- 27 PacifiCorp explained that it applied the methodology it developed for the Oregon Renewable Portfolio Standard (RPS) to calculate the incremental hydropower efficiency gains at the facilities it owns. That methodology is similar to Method 2 developed by the RPS Workgroup. For Wanapum Dam, PacifiCorp relied on Grant County PUD’s calculation of incremental hydropower efficiency gains. Grant County PUD is required to use the method in WAC 194-37-130, which is similar to Method 3 developed by the RPS Workgroup.
- 28 PacifiCorp’s RPS Report also included the other items required by WAC 480-109-040(1) and RCW 19.285.070(1).
- 29 On June 5, 2012, the Commission issued a Notice inviting interested persons to file written comments on PacifiCorp’s RPS Report, in accordance with WAC 480-109-040(2). The Notice stated that the Commission would consider the matter at its July 27, 2012, Open Meeting.
- 30 During the comment period, the Commission received written comments from Renewable Northwest Project and NW Energy Coalition (RNP/NWEC), Public Counsel, and Commission Staff. At the July 27, 2012, Open Meeting, the Commission heard oral comments from RNP/NWEC, Commission Staff, and PacifiCorp. The Commission

orally invited interested persons to file additional written comments no later than August 2, 2012. PacifiCorp and RNP/NWEC filed comments.

31 The Commission heard additional oral comments from PacifiCorp, RNP/NWEC, and Commission Staff during its August 9, 2012, Open Meeting. The Commission also considered Staff's Open Meeting memorandum of that date. The Commission asked Staff to collaborate with interested persons to develop a proposed order, which was presented to the Commission at its Open Meeting of September 13, 2012.

II. SUMMARY AND DISCUSSION OF COMMENTS

32 RNP/NWEC said they were pleased that PacifiCorp had acquired sufficient renewable energy to meet the 2012 target, but noted that PacifiCorp had no surplus should its resources underperform. RNP/NWEC recommended that the Commission adopt a two-step process for determining compliance. RNP/NWEC recommended that the Commission accept the figures in PacifiCorp's corrected RPS Report, but require a second filing in 2013 or 2014 to show whether the resources had performed as expected, and how PacifiCorp had made up for any shortfall. RNP/NWEC expressed concern that Avista, Puget Sound Energy, and PacifiCorp had not used consistent methods for calculating the incremental cost of eligible renewable resources under RCW 19.285.050(1)(b) and WAC 480-109-030(1).

33 Public Counsel took no position with regard to PacifiCorp's RPS Report, but cautioned that any Commission determination in this docket should not constitute a finding of prudence with respect to any renewable resource.

34 In its comments filed on July 16, 2012, Commission Staff stated that PacifiCorp had demonstrated that it was on track to meet the renewable energy target for 2012, though Staff had not scrutinized the model that PacifiCorp used to calculate incremental hydroelectric generation. Staff also expressed concern about the potential for double-counting—that incremental hydropower used for EIA compliance in Washington could, through RECs, be used for compliance with the Oregon RPS, as well.

35 After further discussion with interested parties, Commission Staff recommended at the August 9, 2012, Open Meeting that the Commission adopt a two-step compliance process similar to the one that RNP/NWEC suggested. Staff recommended that the Commission accept the incremental hydropower figures in PacifiCorp's corrected RPS Report, but cautioned that a thorough scrutiny of PacifiCorp's model was still needed, which could

affect compliance determinations in future years. Staff noted that PacifiCorp and Avista appeared to have used different analytical approaches for reporting the incremental hydropower they purchased from Grant County PUD, and should use a consistent approach in the future.

- 36 Like RNP/NWEC, Commission Staff had concerns about the methods the utilities had used for calculating the incremental cost of eligible renewable resources under RCW 19.285.050(1)(b) and WAC 480-109-030(1). Staff recommended that the Commission accept them as satisfying the June 1, 2012, EIA reporting requirement, however.
- 37 PacifiCorp agreed with the recommendation in Commission Staff's August 9, 2012, Open Meeting memorandum, and with the two-step compliance process RNP/NWEC had suggested. PacifiCorp disagreed with RNP/NWEC that there is a risk of underperformance of the eligible renewable resources it is using for 2012 compliance. PacifiCorp is meeting 87.5% of its 2012 renewable energy target with wind RECs produced in 2011. The only uncertainty has to do with actual 2012 production from the incremental hydropower PacifiCorp is using from its own facilities, because PacifiCorp uses a calculation method that depends on actual generation during 2012, and the amount of RECs from the Tuana Springs wind facility that PacifiCorp will be using to fulfill the remaining balance of the 2012 compliance requirement. PacifiCorp stressed that it had invested considerable time in developing its incremental hydropower calculation method in order to comply with the Oregon RPS, and preferred to use a consistent methodology for compliance with the Washington EIA. PacifiCorp disagreed with Commission Staff's comment that there is an actual danger of double-counting incremental hydropower in Washington and Oregon, but expressed willingness to take steps to eliminate any potential for double-counting.
- 38 The Commission agrees with RNP/NWEC, Commission Staff, and PacifiCorp that a two-step process is appropriate for evaluating compliance with RCW 19.285.040(2)(a). In the report it files on June 1 of the target year, 2012 in this case, a utility must demonstrate that it had in hand, as of January 1 of the target year, rights to eligible renewable resources or RECs that are likely to produce the required output for that year. If the resources or contracts fail to perform as expected, the utility must make up for the shortfall. The utility must file a final compliance report no later than June 1 of the second year after the target year, describing the eligible renewable resources and RECs the utility used for compliance during the target year. This two-step process is consistent with the reporting requirements that Commerce has adopted in WAC 194-37-110 for qualifying

utilities that are not investor-owned. It is also consistent with the discussion in the Commission's order adopting WAC 480-109.²⁹

39 The Commission agrees with PacifiCorp, RNP/NWEC, and Commission Staff that the methodology that PacifiCorp used to calculate incremental electricity from hydropower efficiency improvements is acceptable for determining whether PacifiCorp has complied with the June 1, 2012, reporting requirement under RCW 19.285.070(2) and WAC 480-109-040(1). In the future, the Commission may determine that a different methodology is more appropriate for determining EIA compliance in other years.

40 The Commission notes the concerns of RNP/NWEC and Commission Staff regarding the manner in which utilities calculate the incremental cost of eligible renewable resources. For the purpose of meeting the June 1, 2012, reporting requirements only, the Commission accepts the conclusions that PacifiCorp has reached in its corrected RPS Report but may determine in the future that a different method is more appropriate.

41 The Commission agrees with Public Counsel that determining a utility's compliance with the renewable energy provisions of the EIA does not determine the ratemaking treatment of the eligible renewable resources or renewable energy credits that a utility acquires for EIA compliance.

III. FINDINGS AND CONCLUSIONS

42 (1) The Washington Utilities and Transportation Commission is an agency of the state of Washington vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts, securities, transfers of property and affiliated interests of public service companies, including electrical companies. RCW 80.01.040; RCW Chapters 80.04, 80.08, 80.12, 80.16, 80.28.

43 (2) PacifiCorp is an electrical company and a public service company subject to Commission jurisdiction. PacifiCorp is an "investor-owned utility" under RCW 19.285.030(11).

44 (3) PacifiCorp serves more than 25,000 customers within the State of Washington, and it is a "qualifying utility" within the meaning of RCW 19.285.030(16).

²⁹ *Rules to Implement the Energy Independence Act*, Docket UE-061895, General Order R-546 ¶¶ 32, 38 (Nov. 30, 2007).

- 45 (4) Under RCW 19.285.040(2)(a), each qualifying utility “shall use eligible renewable resources or acquire equivalent renewable energy credits, or any combination of them, to meet the following annual targets: (i) At least three percent of its load by January 1, 2012, and each year thereafter through December 31, 2015.” WAC 480-109-020(1)(a) contains the same requirement.
- 46 (5) Under RCW 19.285.040(2)(a)(i) and WAC 480-109-020(1)(a), PacifiCorp’s renewable energy target for 2012 is 119,857 megawatt-hours.
- 47 (6) Under RCW 19.285.030(10)(a) and WAC 480-109-007(9)(a), “eligible renewable resources” include:
- Electricity from a generation facility powered by a renewable resource other than fresh water that commences operation after March 31, 1999, where: (i) The facility is located in the Pacific Northwest
- Under RCW 19.285.030(18)(a) and WAC 480-109-007(18)(a), wind is a “renewable resource.” Under RCW 19.285.030(14) and WAC 480-109-007(15), “Pacific Northwest” includes Washington, Oregon, and Idaho, as well as other areas.
- 48 (7) Under RCW 19.285.030(17) and WAC 480-109-007(17), a “renewable energy credit” represents at least one megawatt-hour of an eligible renewable resource other than fresh water. Under RCW 19.285.040(2)(e), a qualifying utility may meet its 2012 renewable energy target with renewable energy credits produced during 2011, 2012, or 2013.
- 49 (8) In the RPS Report that PacifiCorp filed on June 1, 2012, as corrected July 13, 2012, PacifiCorp reported that, as of January 1, 2012, it had acquired 117,716 renewable energy credits, representing 117,716 megawatt-hours of wind energy, for its use in 2012. The wind facilities listed in PacifiCorp’s corrected RPS Report are located in the Pacific Northwest and commenced operation after March 31, 1999. The electricity they generate is an “eligible renewable resource” within the meaning of RCW 19.285.030(10)(a) and WAC 480-109-007(9)(a). All of the renewable energy credits described in PacifiCorp’s corrected RPS Report were produced in 2011 or will be produced in 2012, and may be used for 2012 compliance in accordance with RCW 19.285.040(2)(e).

- 50 (9) Under RCW 19.285.030(10)(b) and WAC 480-109-007(9)(b), “eligible renewable resources” include:

Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying utility and located in the Pacific Northwest or to hydroelectric generation in irrigation pipes and canals located in the Pacific Northwest, where the additional generation in either case does not result in new water diversions or impoundments.

Under RCW 19.285.030(14) and WAC 480-109-007(15), “Pacific Northwest” includes Oregon and Washington, as well as other areas.

- 51 (10) In the RPS Report that PacifiCorp filed on June 1, 2012, PacifiCorp reported that, as of January 1, 2012, it had acquired an estimated 2,141 megawatt-hours of incremental electricity from hydroelectric upgrades for its use in 2012. All of the hydroelectric facilities listed in PacifiCorp’s corrected RPS Report are located in the Pacific Northwest, and all are owned by a qualifying utility. All of the hydroelectric efficiency improvements listed in PacifiCorp’s corrected RPS Report were completed after March 31, 1999. PacifiCorp has demonstrated that, as of January 1, 2012, it had the right to use 2,141 megawatt-hours of eligible renewable resources, as defined in RCW 19.285.030(10)(b) and WAC 480-109-007(9)(b), in 2012.
- 52 (11) In the RPS Report that PacifiCorp filed on June 1, 2012, as corrected July 13, 2012, PacifiCorp reported that it had acquired eligible renewable resources, renewable energy credits and contracts for renewable energy credits sufficient to meet its target of 119,857 megawatt-hours in 2012.
- 53 (12) PacifiCorp has demonstrated that, by January 1, 2012, it had acquired eligible renewable resources, equivalent renewable energy credits and contracts for renewable energy credits sufficient to supply at least three percent of its load for the remainder of 2012, as required by RCW 19.285.040(2)(a)(i) and WAC 480-109-020(1)(a).
- 54 (13) PacifiCorp has met the reporting requirements of RCW 19.285.070 and WAC 480-109-040(1).

- 55 (14) WAC 480-109-040(5) requires PacifiCorp to provide a summary of its corrected RPS Report to its customers, by bill insert or other suitable method, within ninety days of the date of this Order 01.
- 56 (15) The Commission expresses no opinion on whether Grant County Public Utility District has complied with the EIA. Nothing herein shall be used as evidence of Grant County PUD's compliance or lack thereof.

IV. ORDER

THE COMMISSION ORDERS:

- 57 (1) Under RCW 19.285.040(2)(a)(i) and WAC 480-109-020(1)(a), the 2012 renewable energy target for PacifiCorp d/b/a Pacific Power and Light Company is 119,857 megawatt-hours.
- 58 (2) Pacific Power and Light Company has complied with the June 1, 2012 reporting requirements pursuant to WAC 480-109-040.
- 59 (3) Pacific Power and Light Company has demonstrated that, by January 1, 2012, PacifiCorp acquired eligible renewable resources, renewable energy credits and contracts for renewable energy credits sufficient to meet its target of 119,857 megawatt-hours, as required by RCW 19.285.040(2)(a)(i) and WAC 480-109-020(1)(a).
- 60 (4) Pacific Power and Light Company must file a second report no later than June 1, 2014, that provides the information necessary to determine whether Power and Light Company met the January 1, 2012, target, including the specific megawatt-hours and/or renewable energy credits used to meet the target.

DATED at Olympia, Washington, and effective September 13, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner