

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

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

Respondent.

DOCKET UE-210829

**PUBLIC COUNSEL’S RESPONSE TO
PACIFICORP MOTION FOR
CLARIFICATION OR REVIEW**

I. INTRODUCTION

I In accordance with WAC 480-07-810(3)(b), the Public Counsel Unit of the Washington State Attorney General’s Office (Public Counsel) hereby provides its response to the Motion for Clarification or Review (Petition), which PacifiCorp, d/b/a Pacific Power & Light Company (PacifiCorp or the Company) filed on May 30, 2023, in Docket UE-210829.¹ On June 1, 2023, the Washington Utilities and Transportation Commission (UTC or Commission) issued a Notice of Opportunity to Respond to Petition for Review of Interlocutory Order (Notice), stating that it construes PacifiCorp’s motion as a petition for review of an interlocutory order filed pursuant to WAC 480-07-810(3).² In its Petition, PacifiCorp requests clarification that it can update its interim targets for the 2022–2025 Clean Energy Implementation Plan (CEIP) compliance period

¹ PacifiCorp Motion for Clarification or Review, *Wash. Utils. and Transp. Comm’n v. PacifiCorp, d/b/a Pacific Power & Light Co.*, Docket UE-210829 (filed May 30, 2023) (hereinafter ‘Petition’); Notice of Opportunity to Respond to Petition for Review of Interlocutory Order, *Wash. Utils. and Transp. Comm’n v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-210829 (issued June 1, 2023) (hereinafter ‘Notice’).

² Notice at 1–2.

during the Company's November 2023 biennial update, or in the alternative, PacifiCorp seeks revision of the Commission's May 18, 2023, Prehearing Conference Order³ to allow PacifiCorp to update its CEIP interim targets in this proceeding. Public Counsel believes that it is in the public interest for PacifiCorp to update the interim targets in PacifiCorp's CEIP at the earliest possible date in this proceeding to save the Commission and parties to this proceeding substantial effort and expense of public resources. The first round of settlement discussions in this Docket will take place on July 7, 2023. To enable productive discussions, promote clarity, and minimize confusion on that date, the Commission should revise its May 18, 2023, Prehearing Conference Order to include a deadline for an update or errata to the Revised CEIP to correct the Interim Targets by June 30, 2023.

II. BACKGROUND

2 PacifiCorp first filed its CEIP in this Docket on December 30, 2021, after obtaining an extension to file the CEIP after the original deadline of October 1, 2021.⁴ After the December 30, 2021, CEIP filing in Docket UE-210829, the approval process stalled during the pendency of the UTC Staff's June 2022 Complaint for Penalties against PacifiCorp in Docket UE-220376 alleging PacifiCorp's failure to incorporate the Social Cost of Greenhouse Gases (SCGHG) as required into the CEIP.⁵ On February 10, 2023, the Commission approved a settlement

³ *In re PacifiCorp d/b/a Pacific Power & Light Co.'s Revised Clean Energy Implementation Plan*, Docket UE-210829, Order 03, Prehearing Conference Order; Notice of Hearing (May 18, 2023) (hereinafter 'Order 03, Prehearing Conference Order').

⁴ *See, In re Petition for an Exemption from the Filing Deadline Established by WAC 480-100-640(1) and for Continuance of a Filing Deadline Established by Comm'n Ord.*, Docket UE-210223, Order 01, ¶ 29 (July 9, 2021).

⁵ Complaint and Notice of Prehearing Conference, *Wash. Utils. and Transp. Comm'n v. PacifiCorp, d/b/a Pacific Power & Light Co.*, Docket UE-220376 (issued June 6, 2023).

agreement providing for withdrawal of Staff's Complaint in Docket UE-220376 and requiring PacifiCorp to revise its CEIP to correct the SCGHG discussion in the CEIP on March 13, 2023.⁶

3 PacifiCorp filed its Revised CEIP in the Complaint Docket as well as the CEIP Docket in UE-210829 on March 13, 2023. over a year after its initial CEIP filing date of December 30, 2021. Shortly thereafter, citing repeated significant delays in the CEIP approval process, the UTC Staff requested adjudication in this Docket and requested that the Commission set a date for Prehearing Conference.

4 As discussed in the May 18, 2023, Prehearing Conference Order (Order 03) in this Docket, prior to the Prehearing Conference, the UTC Staff emailed the presiding Administrative Law Judge (ALJ), statutory parties, and intervenors, stating that PacifiCorp may seek to revise its CEIP Interim Targets for supplying 60 percent of retail sales with renewable resources by 2025 down to 33 percent, consistent with the Company's Integrated Resource Plan (IRP) Progress Report.⁷ The UTC Staff indicated a preference against allowing such an update in this Docket.⁸ The following day on May 5, 2023, PacifiCorp emailed a proposed schedule to the presiding ALJ, the statutory parties, and intervenors, proposing a date in late June 2023 to update its CEIP proposed interim targets.⁹

5 After addressing the issue of the interim targets update at the May 5, 2023, Prehearing Conference, the Commission issued its May 18, 2023, Prehearing Conference Order stating that the schedule should not include an update to the Revised CEIP's Interim Targets.¹⁰ The

⁶ *Wash. Utils. and Transp. Comm'n v. PacifiCorp, d/b/a Pacific Power & Light Co.*, Docket UE-220376, Order 06 (Feb. 10, 2023); Order 03, Prehearing Conference Order, ¶ 1.

⁷ Order 03, Prehearing Conference Order, ¶¶ 14–15.

⁸ *Id.* ¶ 14.

⁹ *Id.* ¶ 15.

¹⁰ *Id.* ¶ 20.

Commission explains that “updating the Interim Target for 2025 from 60 percent to 33 percent would likely have significant implications for the CEIP’s specific actions and its analysis of how specific actions may impact named communities, among other issues,” and that “there would be concerns with adopting any schedule that would suggest that Interim Targets may be updated to such a significant extent in isolation from other aspects of the CEIP.”¹¹

6 The Prehearing Conference Order also discusses the concern that “updating the revised CEIP’s Interim Targets may require significant additional discovery and tend to hinder any possible settlement in this Docket.”¹² The Order then concludes that “the public interest would generally appear to favor reviewing the Revised CEIP in its present form and encouraging a more timely resolution through alternative dispute resolution,” and for those reasons declined to include a deadline for an update or errata to the revised CEIP in the schedule for this Docket.¹³

7 PacifiCorp filed its Petition on May 30, 2023, asking the Commission either to clarify that PacifiCorp can update its interim targets in the Company’s November 2023 biennial update, or in the alternative, to revise the May 18, 2023 Prehearing Conference Order¹⁴ to allow PacifiCorp to update its CEIP interim targets in this proceeding.¹⁵

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¹¹ *Id.*

¹² *Id.* ¶ 21.

¹³ *Id.*

¹⁴ Order 03, Prehearing Conference Order.

¹⁵ *See* Petition.

III. LEGAL STANDARDS

8 The Commission states in its Notice that it construes PacifiCorp’s May 30, 2023, filing as a petition for review of an interlocutory order filed pursuant to WAC 480-07-810(3). WAC 480-07-810(2)(c) establishes that the Commission has discretion to review interim or interlocutory orders. The Commission may accept review of such orders if it finds that immediate review could save the Commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.¹⁶

IV. ARGUMENT

9 Public Counsel believes that it is in the public interest for PacifiCorp to update or correct its CEIP Interim Targets as soon as possible to avoid substantial effort and expense by the parties and the Commission. Waiting for the November biennial CEIP update to correct the targets would only induce further unnecessary delay in the CEIP approval process in this Docket. The first round of settlement discussions in this Docket will take place on July 7, 2023. Public Counsel believes the Commission should revise its May 18, 2023, Prehearing Conference Order to set June 30, 2023, as the deadline for an update or errata to the Revised CEIP in order to correct PacifiCorp’s Interim Targets and conserve public resources and maximize efficiency in the alternative dispute resolution process for this Docket.

10 The Commission and the parties are aware of the fact that PacifiCorp’s Interim Targets in its currently-filed Revised CEIP are incorrect. Some detail regarding the extent of the reductions to the Interim Targets is already stated in the record for this Docket in the transcript of the May

¹⁶ WAC 480-07-810(2)(c).

5, 2023 Prehearing Conference, in the May 18, 2023 Prehearing Conference Order, and in PacifiCorp's May 30, 2023 Petition.¹⁷ The Company's Integrated Resource Plan (IRP) Progress Report discusses the reduced targets in Docket UE-200420.¹⁸ To work toward a resolution in this Docket through alternative dispute resolution of CEIP issues in this Docket, the parties will need to exchange information about the targets, both through informal communications and formally through the discovery process. Proceeding in this Docket without an updated CEIP or a date for an expected update would create confusion and a lack of clarity that could stall alternative dispute resolution on issues that relate to the targets and prevent a more timely approval of the PacifiCorp CEIP. A timely update to the CEIP interim targets is thus crucial to achieving the goals of CETA.

11 The Commission notes in its Prehearing Conference Order its concern about hindering settlement in this Docket and that the public interest favors a more timely resolution through alternative dispute resolution.¹⁹ Disallowing an update on the CEIP interim targets at a date earlier than the November biennial CEIP update would tend to complicate the alternative dispute resolution process, especially where disputes relate to the targets themselves or to specific actions predicated on the targets. Resolution of the issues in this proceeding and approval of the CEIP will not be more timely by preventing PacifiCorp from filing an update to its Interim Targets.

¹⁷ See Judge Michael Howard, TR. 6:20–7:13; Zachary Rogala, TR. 7:14–8:1; Prehearing Conference Order, ¶ 14; Petition, ¶¶ 3–10, 14–24.

¹⁸ 2023 IRP Update, Volume II, App. O, Figure O.1, *In re PacifiCorp's 2023 IRP Update*, Docket No. UE-200420 (filed Apr. 25, 2023).

¹⁹ Order 03, Prehearing Conference Order, ¶¶ 21–22.

12 In addition, as the Commission notes, further discovery may be necessary upon learning the precise nature of the updated targets.²⁰ In its May 5, 2023, communications with the ALJ in this proceeding, PacifiCorp indicated it could update its targets as early as late June 2023. The date for the first round of settlement discussions is July 7, 2023.²¹ To enable the parties to make progress during those settlement discussions, Public Counsel believes PacifiCorp should provide an update on or before June 30, 2023. Delaying that update another four months or more would delay the discovery process in this Docket by at least that amount of time, given its relevance to the issues in this proceeding.

13 Therefore, consistent with WAC 480-07-810(2)(c), to save the Commission and parties substantial effort and expense of adjudicatory resources and to avoid further unnecessary delay in this proceeding, the Commission should revise its May 18, 2023, Prehearing Conference Order to allow PacifiCorp to update its Interim Targets in its CEIP by June 30, 2023.

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²⁰ *Id.* ¶ 21.

²¹ Order 03, Prehearing Conference Order at 11, App. B.

V. CONCLUSION

14 For the reasons discussed above, Public Counsel believes that consistent with WAC 480-07-810(2)(c), the Commission should revise its May 18, 2023, Prehearing Conference Order to set June 30, 2023, as the deadline for an update or errata to PacifiCorp’s Revised CEIP to correct PacifiCorp’s Interim Targets. Setting June 30, 2023 as the date for PacifiCorp to update its Interim Targets will clarify interim targets ahead of the first round of settlement discussions and further the public interest in conserving significant Commission and party effort and expense in this Docket.

Dated this 12th day of June, 2023.

ROBERT W. FERGUSON
Attorney General

s/ Ann Paisner

ANN N.H. PAISNER, WSBA No. 50202
Assistant Attorney General

Attorney for Public Counsel

Washington Office of the Attorney General
Public Counsel Unit
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
Ann.Paisner@atg.wa.gov
(206) 521-3211