

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

RESPONSE TO PACIFICORP'S
PETITION FOR REVIEW OF
INTERLOCUTORY ORDER ON
BEHALF OF COMMISSION STAFF

I. BACKGROUND

1 On May 30, 2023, PacifiCorp (PacifiCorp or the Company) filed a motion “seek[ing] clarification that it may update the interim compliance targets for its Clean Energy Implementation Plan (CEIP) in the biennial CEIP update due November 2023, because the Order declined to allow for an update to the interim targets in this proceeding.”¹ In the alternative, the Company seeks review and revision of the order to permit an update to the interim targets in this proceeding. On June 1, 2023, the Commission issued a notice that it construed the Company’s motion as a petition for review of an interlocutory order pursuant to WAC 480-07-810(3).

II. LEGAL STANDARD

2 Under WAC 480-07-810(2), the Commission has discretion to review interim or interlocutory orders. The rule outlines the circumstances in which the Commission may accept review.² Staff finds it is unnecessary to analyze those requirements in this instance. As

¹ *PacifiCorp Motion for Clarification or Review*, Docket UE- 210829, p.1 ¶ 1 (May 30, 2023) (Motion).

² These circumstances are:

(a) The order terminates a party's participation in the proceeding, and the party's inability to participate thereafter could cause it substantial and irreparable harm;

explained further below, explaining the basis for denying review and granting review would lead to the same outcome: confirmation that the plain language of commission rule allows the Company to propose updates in the November biennial update filing.³

III. ARGUMENT

3 Review of the commission rules related to CEIP biennial updates indicates that the answer to PacifiCorp’s question is yes, it may update its interim targets during the biennial update. WAC 480-100-640(11) states in part that “[t]he utility must file its biennial CEIP update in the same docket as its most recently filed CEIP and include an explanation of how the update will modify targets in its CEIP. *In addition to its proposed biennial conservation plan, the utility may file in the update other proposed changes to the CEIP as a result of the integrated resource plan progress report.*” (Emphasis added).

4 Subsection 11 clearly confirms both that 1) a utility is permitted to propose changes to the CEIP as a result of its IRP progress report, and 2) that a utility must explain how those proposed updates will modify targets in its CEIP. Given that an interim target is a type of target within a CEIP⁴, the plain language of the rule states that PacifiCorp can propose updates its interim targets during the CEIP biennial update this November.

5 The Commission’s Adoption Order supports this reading of the rule: “Proposed WAC 480-100-640(11) allows utilities to update a CEIP based upon any changes included

(b) Immediate review is necessary to prevent substantial prejudice to a party that would not be remediable in the commission's final order; or

(c) 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.

WAC 480-07-810(2).

³ In short, denying review would likely involve explaining that Pacificorp is not prejudiced under WAC 480-07-810(2)(b) and immediate review would not save the commission or parties substantial effort or expense under WAC 480-07-810(2)(c), in both cases because the plain language of the rule already confirms that the Company may propose an update to its interim target as part of the biennial update process.

⁴ RCW 19.405.060(1)(a)(ii).

in an IRP progress report. Utilities should include in their updates any resulting changes to customer benefits.”⁵ Read together, WAC 480-100-645(2) and WAC 480-100-640(11) also create a clear inference that the purpose of the CEIP biennial update is to allow interested parties to propose reasonable adjustments and modifications to an approved CEIP based on new information and analysis.⁶ The CEIP biennial update is subject to the same process and evidentiary standards as the CEIP itself, which allows interested parties to propose changes to the CEIP and submit evidence sufficient to justify making those changes.

6 Finally, Staff will note that both before and during the prehearing conference, the discussions amongst the parties explicitly assumed that if the Company’s proposal to update the interim targets was not addressed in the current proceeding, then that proposal would be addressed in the biennial update instead. Indeed, the bulk of the time at the prehearing conference was devoted to discussing whether the proposal should be addressed in this proceeding, or in the biennial update. While admittedly the PHC Order does not provide the explicit assurance the Company seeks in its’ current petition,⁷ Staff still finds the Company’s concerns puzzling. There was a clear understanding amongst all parties at the prehearing conference regarding the procedural options that were being considered to address this issue.⁸ Even if there had not been that clear understanding, Staff finds it highly unlikely that the Commission, having declined to allow the proposed update in this case,

⁵ See generally, *In the Matter of Adopting Rules Relating to Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act*, Dockets UE-191023 and UE-190698 (Consolidated), General Order 601, p. 26, ¶ 68 (Dec. 28, 2020).

⁶ Although this issue is not specifically raised in the Motion, Staff will note here that it assumes that the Commission will not set interim or specific targets for years that have already past, or as part of a biennial update Order, modify any targets for years that have already past. In other words, if the Commission set interim targets for the first two years of a compliance period and the utility did not meet those interim targets, the utility could not come into compliance by proposing to modify those targets during its biennial update.

⁷ Presumably the Commission, like Staff, concluded that such an explicit assurance was unnecessary given the plain language of the rule.

⁸ See e.g., Motion at 3-4, ¶ 8.

would deny Pacificorp the ability to propose updates to interim targets as part of the 2023 biennial update filing.

7 Commission Staff continues to support the Commission addressing any changes to interim targets that PacifiCorp intends to propose in the upcoming biennial update this November rather than in the current adjudication. The rules by their plain language contemplate the possibility that new information might become available that justifies adjustments to a CEIP, including the interim and specific targets. The biennial update is the usual process by which any proposed changes to the CEIP can be considered and decided.⁹

8 Because the Company’s primary requested relief is confirmation that it can propose to update its interim targets under commission rule, the Commission should either:

1. Deny the motion for interlocutory review, explaining that review is unnecessary in light of the plain language of the rule. Given that PacifiCorp can propose to modify its interim targets in the CEIP biennial update under Commission rule, none of the circumstances outlined in WAC 480-07-810(2)(a)-(c) are present; or
2. Accept review and confirm that under Commission rule Pacificorp is permitted to propose updated interim targets as part of the CEIP biennial update process this November.

9 Given that the substantive outcome of both these options is the same, Staff does not have a strong preference between the two. However, when the Commission does decide on the Company’s motion, Staff suggests that the Commission provide additional clarity to the Company in light of some of the statements made in the Company’s petition and at the prehearing conference. Specifically, the Commission should make the general expectations for the biennial update filing and any proposed updates to the Company’s interim targets

⁹ Staff qualifies this statement with the word “usual” because RCW 19.405.060(1)(c) makes clear that the Commission has the authority to adjust targets and timelines at any time, provided it makes certain findings.

clear to the Company. While providing this guidance is not necessary, it may prevent confusion and disagreement when the electric utilities file their biennial updates in November.

10 First and foremost, the Commission should clarify its' expectation that the Company provide sufficient evidentiary support for such a significant proposed change to the interim targets in the biennial update. The Commission in its PHC Order stated 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."¹⁰ And that "[t]here 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 Staff agrees and respectfully requests that the Commission make clear to the Company that the Commission expects the same level of evidentiary support and analysis for any future proposed interim target update as the Commission expects for proposed interim targets in an initial CEIP. To support its' interim target proposal, the Company will need to include updates to nearly every aspect of the CEIP¹², including specific actions, and the impacts those changes have on equity and customer benefits. Staff is concerned that the Company may currently be operating under a different set of assumptions regarding the biennial update and its' future proposal.

¹⁰ Docket UE-210829, Order 03 at 4, ¶ 20.

¹¹ *Id.* at 4-5, ¶ 20.

¹² Indeed, it is likely easier to consider which aspects of a CEIP would not require an update in light of such a significant change in interim targets.

11 Second, at the prehearing conference, Counsel for PacifiCorp stated that he believes that the interim targets are a “discrete issue” which “can be largely separated from the procurement question.”¹³ This position was repeated in the motion to clarify,¹⁴ which states that “updating the Company’s interim targets will not impact these compliance efforts and procurement strategies.” In the motion, the Company explains this position by stating that “The Company will issue subsequent all-source RFPs and consider additional procurement strategies to meet these demands.” These statements appear to be aimed at assuring the Commission that, despite the proposed changes to the Company’s interim targets, PacifiCorp is taking action in the near term to facilitate the transition to clean energy. But these statements also could be interpreted to mean that the Company foresees a disconnection between the biennial update filing and actual acquisition decisions.

12 In all fairness, this petition was filed prior to the Commission issuing its’ decision in the 2021 PSE CEIP. However, Staff believes it would be prudent to make clear to PacifiCorp now that it is expected to follow the Commission’s guidance in the 2021 PSE CEIP Order related specific actions¹⁵ in its’ biennial update filing in November. Given the substantial change the proposed interim targets updates would represent, Staff expects a corresponding change in the CEIP’s specific actions. Those updated specific actions should be consistent with the guidance provided in the recently issued 2021 PSE CEIP Order.

13 Finally, the Commission should also make clear that, considering the proposed dramatic reduction of its interim target for 2025, the Company’s proposed updates must be

¹³ Motion at 10, n.34.

¹⁴ *Id.* at 9-10, ¶ 21 (“Consistent with the Company’s Prehearing Conference remarks, updating the Company’s interim targets will not impact these compliance efforts and procurement strategies.”).

¹⁵ *In re Puget Sound Energy Clean Energy Implementation Plan Pursuant to WAC 480-100-640*, Docket UE-210795, Order 08, p. 58, ¶ 221 - p. 69, ¶ 255 (June 6, 2023).

accompanied by a detailed explanation of how the updates will affect its ability to meet its CETA compliance requirements and how it proposes to stay on track to meet those requirements.

DATED June 12, 2023.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

/s/ Nash Callaghan, WSBA No. 49682
Assistant Attorney General
Office of the Attorney General
Utilities and Transportation Division
P.O. Box 40128
Olympia, WA 98504-0128
(360) 972-4159
Nash.Callaghan@atg.wa.gov