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PacifiCorp's 2021 Integrated Resource Plan

DOCKET NO. 21-035-09

ORDER

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ISSUED: June 2, 2022

Because PacifiCorp failed to substantially comply with the regulatory guidelines governing development of its 2021 Integrated Resource Plan, we decline to acknowledge it.

### **1. Regulatory and Legal Background**

Utah law requires the Public Service Commission to “engage in long-range planning regarding public utility regulatory policy in order to facilitate the well-planned development and conservation of utility resources.”<sup>1</sup> In service of this mandate, the PSC has, for more than three decades, required PacifiCorp to file biennially an Integrated Resource Plan (IRP).<sup>2</sup>

In 1992, the PSC issued its order establishing “Standards and Guidelines for Integrated Resource Planning for PacifiCorp, Utah Jurisdiction” (hereafter, “Guidelines”).<sup>3</sup> The Guidelines define “integrated resource planning” as a “process which evaluates all known resources on a consistent and comparable basis” that “should result in the selection of the optimal set of resources given the expected combination of costs, risk and uncertainty.”<sup>4</sup> Or, as the PSC more recently articulated: “The IRP process is an open, public process through which all relevant ...

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<sup>1</sup> Utah Code Ann. § 54-1-10.

<sup>2</sup> As the PSC has repeatedly observed, “[t]he PSC relies in part on PacifiCorp’s IRP process to fulfill this planning requirement” with respect to PacifiCorp’s service territory in Utah. *PacifiCorp’s 2019 Integrated Resource Plan*, Docket No. 19-035-02, Order issued May 13, 2020 at 4 [hereafter “2019 Order”]; *see also PacifiCorp’s 2017 Integrated Resource Plan*, Docket No. 17-035-16, Order issued March 2, 2018 at 7 [hereafter “2017 Order”].

<sup>3</sup> *In the Matter of Analysis of an Integrated Resource Plan for PacifiCorp*, Docket No. 90-2035-01, Report and Order on Standards and Guidelines issued June 18, 1992 [hereafter “Guidelines”].

<sup>4</sup> *Id.* at 36 (Guideline 1).

resources are investigated in the search for the optimal set ... to meet current and future electric service needs at the lowest total cost ... in a manner consistent with the long-run public interest, given the expected combination of costs, risks and uncertainty.”<sup>5</sup>

Once completed, PacifiCorp must submit its IRP to the PSC for “review and acknowledgement”<sup>6</sup> where stakeholders have an opportunity to “make formal comment to the [PSC] on the adequacy of the [IRP].”<sup>7</sup> The PSC reviews the IRP “for adherence to the principles stated [in the Guidelines].” While “[a]cknowledgement of an acceptable [IRP] will not guarantee favorable ratemaking treatment of future resource acquisitions,” the IRP “will be used in rate cases to evaluate the performance of the utility.”<sup>8</sup> Guidelines 7-8.

The PSC has concluded in later orders that “[a]cknowledgement of an IRP means it substantially complies with the regulatory requirements of the planning process[,]” *i.e.*, the Guidelines.<sup>9</sup>

## **2. Procedural History of the 2021 IRP**

On February 12, 2021, PacifiCorp filed a request for a five-month extension of time to file its IRP otherwise due on March 31, 2021, arguing the pendency of a significant request for proposals and PacifiCorp’s ongoing efforts to implement new modeling software warranted the

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<sup>5</sup> *In the Matter of Rocky Mountain Power’s 2015 Integrated Resource Plan*, Docket No. 15-035-04, Order issued January 8, 2016 at 6 [hereafter “2015 Order”].

<sup>6</sup> Guidelines at 39 (Guideline 5).

<sup>7</sup> *Id.* (Guidelines 5 and 6).

<sup>8</sup> *Id.* at 40 (Guidelines 7 and 8).

<sup>9</sup> 2015 Order at 6.

extension.<sup>10</sup> The Division of Public Utilities (DPU) opposed the extension, arguing PacifiCorp's 2019 IRP was twice delayed and emphasizing "[s]takeholders and regulators need certainty in order to plan schedules, coordinate consultants, and have adequate time for assessment, evaluation, discovery, and analysis of the IRP with transparency."<sup>11</sup> Other stakeholders did not oppose the request with the Office of Consumer Services (OCS), for example, expressing concern that "modeling delays [associated with PacifiCorp's new software] may not allow time for stakeholders to review results, provide input and ask for additional analyses."<sup>12</sup> OCS noted "[s]takeholders have often criticized PacifiCorp in the past for last minute modeling results" that do not allow "time for stakeholders to meaningfully respond."<sup>13</sup> On March 15, 2021, the PSC granted PacifiCorp's request for an extension, but noted it "share[d] the DPU's concern that the extension not affect subsequent filing deadlines."<sup>14</sup>

On September 1, 2021, PacifiCorp filed its 2021 IRP.<sup>15</sup> The PSC held a scheduling conference on September 14, 2021, during which stakeholders stipulated to a schedule for the docket, including a technical conference, initial comments, and reply comments. The PSC subsequently adopted a schedule for the docket to which stakeholders stipulated at a scheduling

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<sup>10</sup> PacifiCorp's IRP is due March 31 of each odd-numbered year. *In the Matter of the Acknowledgment of PacifiCorp's Integrated Resource Plan*, Docket No. 09-2035-01, Order issued April 1, 2010 at 57.

<sup>11</sup> DPU's Comments filed March 3, 2021 at 6.

<sup>12</sup> OCS's Comments filed March 3, 2021 at 2.

<sup>13</sup> *Id.*

<sup>14</sup> Order Granting Request for Extension to File issued March 15, 2021 at 3.

<sup>15</sup> PacifiCorp filed an errata and corrected version of its 2021 IRP on September 15, 2021. For clarity, any later reference to the "2021 IRP" in this order refers to the corrected version.

conference, including a technical conference, comments due March 4, 2022, and reply comments due April 7, 2022.<sup>16</sup>

The DPU and OCS submitted initial comments along with the following intervenors: Salt Lake City Corporation, Renewable Energy Coalition, Southwest Energy Efficiency Project, Sierra Club, Utah Association of Energy Users, Utah Clean Energy (UCE), Fervo Energy Company, Interwest Energy Alliance, and Western Resource Advocates (WRA). The PSC also received public comments from numerous other stakeholders that are posted to this docket on the PSC's website.

The following parties submitted reply comments: PacifiCorp, DPU, OCS, UCE, Sierra Club, and WRA.

### **3. Discussion, Findings, and Conclusions**

Parties' comments raise, contingent on how they are categorized, approximately two dozen concerns with the 2021 IRP. Some of these concerns are relatively broad and regard simple compliance with the Guidelines whereas others are more technical and specific (*e.g.*, application of hourly reserve margins to individual load areas, the capacity value of solar, inclusion of the Natrium nuclear plant, etc.). Because we conclude PacifiCorp has failed to substantially comply with the Guidelines in two basic and fundamental respects, we do not reach consideration of these many other issues.

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<sup>16</sup> Scheduling Order and Notice of Technical Conference issued September 20, 2021.

- a. PacifiCorp Failed to Comply with Guidelines 4(b) and 4(i) by Unilaterally Constraining its Model to Preclude Selection of New Natural Gas Resources.

Guideline 4(b) requires “[a]n evaluation of all present and future resources ... on a consistent and comparable basis” and evaluation “of all technically feasible generating technologies.”<sup>17</sup> Further, Guideline 4(i) requires PacifiCorp include “[c]onsiderations permitting flexibility in the planning process so that [PacifiCorp] ... can prevent the premature foreclosure of options.”

While PacifiCorp has long relied on natural gas-fired peaking resources, PacifiCorp “chose to constrain [its] model from selecting a new natural gas proxy resource” when creating the 2021 IRP’s preferred portfolio.<sup>18</sup> The DPU and OCS each contend RMP’s unilateral election to do so constitutes a violation of the Guidelines and warrants our declining to acknowledge the 2021 IRP.

PacifiCorp replies that “[g]iven the current and projected regulatory environment concerning fossil fuel generation and concerns over stranded costs, [it] determined that it would not be feasible to construct new natural gas generation.”<sup>19</sup> PacifiCorp assumes the depreciable life of a new natural gas resource to be 30 to 40 years, and argues “[t]his length of time presents a considerable stranded cost risk considering the potential for future regulation constraining fossil fuel generation.”<sup>20</sup> PacifiCorp also asserts “very limited development activity for new

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<sup>17</sup> *Id.* at 37 (Guideline 4).

<sup>18</sup> PacifiCorp’s Reply Comments filed April 7, 2022 at 18 [hereafter “PacifiCorp’s Reply”].

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 19.

natural gas” exists and “it is not feasible to assume new natural gas resources can obtain the permits needed to site and operate such a facility in parts of PacifiCorp’s service territory.”<sup>21</sup>

PacifiCorp’s explanation is insufficient. First, while construction of new natural gas plants may have slowed in the United States, DPU and OCS cite publicly available data showing significant new capacity continues to be built throughout the country.<sup>22</sup> As for Utah, a few select counties are subject to state implementation plans regarding particulate matter that might present a permitting challenge, but PacifiCorp has not demonstrated unreasonable permitting difficulties exist in other areas of the state or in Wyoming.<sup>23</sup>

We recognize concerns exist as to whether and how the federal government might impose new or stricter regulations on carbon-emitting resources. We also recognize that some states in PacifiCorp’s service territory have imposed or are working to impose restrictions that would shorten the useful life of natural gas-fired resources in those jurisdictions. With respect to the latter, other states’ policy choices cannot dictate alternatives for Utah customers. As for new federal regulation, this is a potentiality – not a certainty – that has existed for quite some time and existed during the development of former IRP cycles during which PacifiCorp appropriately modeled natural gas proxy resources.

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<sup>21</sup> *Id.*

<sup>22</sup> DPU’s Comments filed March 4, 2022 at 37 [hereafter “DPU’s Comments”] (“The U.S. Energy Information Administration ... states that between 2022 and 2025, 27.3 gigawatts (GW) of new natural-gas fired capacity is scheduled to come online in the United States”) (internal quotation omitted); OCS’s Comments filed March 4, 2022 at 2 [hereafter “OCS’s Comments”] (“[T]here are over 280 [natural gas] units currently under construction or in planning stages here in the US”).

<sup>23</sup> DPU’s Comments at 37.

In any event, to the extent concerns exist about stranded costs associated with new carbon taxes or other potential new regulatory burdens, PacifiCorp should have worked with stakeholders to determine an appropriate method for modeling and quantifying those concerns.<sup>24</sup> Instead, as discussed *infra* at 15, PacifiCorp waited for approximately a year and a half into the public input process to disclose it had elected not to model new natural gas resources.<sup>25</sup> In fact, at meetings in July and September 2020, PacifiCorp presented information regarding natural gas plants' supply-side characteristics and performance, implicitly indicating to stakeholders it intended to model natural gas resources consistent with its practice in prior planning cycles.<sup>26</sup> Consequently, stakeholders were caught unawares on June 25, 2021 when PacifiCorp disclosed, as the DPU puts it, that it "was planning to manually force the model to not select new natural gas plants as proxy resources."<sup>27</sup>

PacifiCorp protests that it did, in fact, "produce[] a sensitivity in the 2021 IRP that allowed new natural gas proxy resources,"<sup>28</sup> but this was not a component of the 2021 IRP as filed. Rather, PacifiCorp ran the analysis at the DPU's request after the DPU learned, very late in the process, of RMP's unilateral decision to exclude natural gas. PacifiCorp did not provide the results of that analysis until September 15, 2021, several weeks after it filed the 2021 IRP. Thus,

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<sup>24</sup> See DPU's Comments at 35 ("The [DPU] sees no reason why these risks cannot be quantified using ... a carbon tax forecast and other quantitative inputs.").

<sup>25</sup> PacifiCorp commenced its public input meetings for the 2021 IRP planning cycle in January 2020, yet stakeholders first learned of PacifiCorp's decision to exclude natural gas resources at a meeting held June 25, 2021. By then, the original, presumed filing deadline of March 31 was nearly three months past, and the extended IRP filing deadline of September 1 loomed little more than two months away. 2021 IRP, Appx. C at 83; DPU Comments at 11.

<sup>26</sup> *Id.*

<sup>27</sup> DPU's Comments at 11.

<sup>28</sup> PacifiCorp's Reply at 19.

“the sensitivity did not inform the IRP.”<sup>29</sup> Additionally, it is not clear stakeholders had any input into the sensitivity’s design and whether they would have pressed for changes if given a reasonable opportunity.<sup>30</sup>

As DPU observed, PacifiCorp’s “decision to block a (possibly) cost-effective resource from being modeled ... is unprecedented.”<sup>31</sup> Whatever their merit, PacifiCorp’s concern that “current and projected” environmental regulations disqualify natural gas plants from consideration, could not have reasonably materialized overnight. Nothing in the nature of this perceived risk precluded PacifiCorp from raising the issue with stakeholders early in the IRP process.

We conclude PacifiCorp’s unilateral decision to exclude a resource type that has long been a staple of IRP planning was an unambiguous failure to evaluate “all present and future resources” and “all technically feasible technologies” that resulted in “premature foreclosure” of a potentially viable resource option. We further conclude this failure constitutes a violation of Guidelines 4(b) and 4(i).

- b. PacifiCorp Failed to Comply with Guideline 3 Because It Did Not Provide Ample Opportunity for Public Input and Exchange of Information During Development of the 2021 IRP.

Collaboration with stakeholders to develop the IRP is fundamental to the process and such collaboration necessarily includes stakeholders’ access to information that allows for

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<sup>29</sup> DPU’s Comments at 11.

<sup>30</sup> For example, PacifiCorp’s reply comments indicate the sensitivity assumed “new natural gas could not be considered the least-risk resource.” PacifiCorp’s Reply at 19. Regardless of whether consensus exists on this issue, it is the sort of issue that stakeholders ought to have had a reasonable opportunity to discuss.

<sup>31</sup> DPU’s Comments at 11.



reasonable and meaningful participation. At the very outset, the Guidelines explain that “Information Exchange is the most reasonable method for developing and implementing [IRP] planning.” Thus, Guideline No. 3 requires PacifiCorp to develop its IRP “in consultation with the [PSC], its staff, the [DPU], the [OCS], appropriate Utah state agencies and interested parties.”<sup>32</sup> Further, “PacifiCorp [must] provide ample opportunity for public input and information exchange *during the development* of its [IRP].”<sup>33</sup>

The PSC has been clear: “We view the IRP process as one in which parties are able to provide input and receive information on relevant issues, inputs, models, and results ... Therefore, the opportunity for all parties to examine and provide information during the IRP[’s] development, rather than after the fact, is an important aspect of the IRP process.”<sup>34</sup>

Nevertheless, since 2017, DPU, OCS, and others have consistently complained PacifiCorp has precluded meaningful participation in the IRP process by failing to timely provide stakeholders with the basic and essential information they require in order to participate in planned stakeholder discussions.

- i. PacifiCorp has shown consistent disregard for Guideline 3 since, at least, 2017, despite the PSC admonishing it for failing to satisfy Guideline 3 for the 2017 IRP and despite PacifiCorp’s representation to the PSC that it would use its “best efforts” to provide information to stakeholders three business days in advance of public meetings after the 2019 IRP.

In 2017, DPU complained PacifiCorp’s failure to provide “materials in advance of the stakeholder meetings, very compressed meeting agendas, and rushed presentations” rendered

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<sup>32</sup> *Id.* at 36 (Guideline 3).

<sup>33</sup> *Id.* (emphasis added).

<sup>34</sup> 2017 Order at 7-8.

them an ineffective “forum for parties to discuss inputs, assumptions, and models.”<sup>35</sup> DPU claimed PacifiCorp’s conduct “effectively excluded participants from any meaningful engagement” during a critical period when PacifiCorp was adding significant new resources<sup>36</sup> to the IRP analysis and “parties did not have a reasonable opportunity to evaluate and reach an understanding on various IRP issues.”<sup>37</sup> OCS similarly argued PacifiCorp failed to satisfy Guideline 3 in 2017 because “it provided essentially no opportunity for public input and information exchange regarding the decision to pursue [significant new wind and transmission] projects.”<sup>38</sup>

Consequently, in 2017, the PSC concluded PacifiCorp failed to comply with Guideline 3.<sup>39</sup> The PSC cautioned PacifiCorp that we “expect PacifiCorp to fully comply with Guideline 3” in the future.<sup>40</sup>

Nevertheless, again in 2019, “DPU, UCE, and WRA voice[d] concerns over the timeliness of PacifiCorp’s provision of meeting materials prior to scheduled public stakeholder meetings.”<sup>41</sup> DPU complained PacifiCorp had failed to distribute meeting materials in advance

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<sup>35</sup> *Id.* at 18.

<sup>36</sup> We refer to the wind repowering, new transmission, and new wind investments collectively referred to in the 2017 docket as “Energy Vision 2020.”

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 19.

<sup>39</sup> The PSC specifically concluded PacifiCorp’s “late introduction of Energy Vision 2020 information and analysis during the 2017 IRP process prevented parties from having ample opportunity to evaluate the relevant material, and did not meet the requirements of Guideline 3.” *Id.* at 21-22.

<sup>40</sup> With some ambivalence, the PSC ultimately acknowledged the 2017 IRP, noting it had not found PacifiCorp substantially violated any other Guideline and admonishing PacifiCorp to fully comply with Guideline 3 in the 2019 IRP. *Id.* at 44-45.

<sup>41</sup> 2019 Order at 18.

of public input meetings, compromising stakeholders' opportunity to examine and question the material, impairing the public input process, and undermining the process' transparency.<sup>42</sup> WRA similarly represented "those of us there to 'provide input and receive information' on the technical merits of [PacifiCorp's] plan" were at a "disadvantage" because "PacifiCorp stopped distributing meeting materials in advance."<sup>43</sup> WRA further lamented that "[l]ack of opportunity to digest the voluminous, complex, technical, and significant information ahead of the public meetings hindered [its] ability to ask meaningful questions and have a thoughtful dialogue."<sup>44</sup>

No party argued the PSC should decline to acknowledge the 2019 IRP as a consequence of PacifiCorp's failure to timely disclose information. Instead, DPU and WRA each requested the PSC require PacifiCorp to provide meeting materials several days in advance of public meetings. In reply, PacifiCorp conceded "parties' request for receipt of meeting materials at least three full business days in advance of the meetings is a reasonable one in most cases."

PacifiCorp committed to use its "best efforts" to do so in the future, but asked no "undue penalty" attach and that PacifiCorp receive "some leeway" under especially challenging or unforeseen circumstances.<sup>45</sup>

Consistent with its established preference not "to micromanage the IRP process beyond the language contained in Guideline 3,"<sup>46</sup> the PSC declined to amend the Guidelines, concluding

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<sup>42</sup> *PacifiCorp's 2019 Integrated Resource Plan*, Docket No. 19-035-02, DPU's Comments filed February 4, 2020 at 25.

<sup>43</sup> *PacifiCorp's 2019 Integrated Resource Plan*, Docket No. 19-035-02, WRA's Comments filed February 4, 2020 at 15.

<sup>44</sup> *Id.* at 15-16.

<sup>45</sup> *PacifiCorp's 2019 Integrated Resource Plan*, Docket No. 19-035-02, PacifiCorp's Reply Comments filed March 2, 2020 at 24.

<sup>46</sup> 2017 Order at 22.

“PacifiCorp’s commitment to provide materials three business days in advance of meetings generally satisfies Guideline 3.”<sup>47</sup>

- ii. In violation of Guideline 3, PacifiCorp continued its pattern of late disclosure, failing to provide stakeholders with ample opportunity for input and exchange of information during development of the 2021 IRP.

PacifiCorp was granted a six-month extension of time to file its 2021 IRP. Citing PacifiCorp’s history of delayed IRP filings and late disclosure, the DPU flatly opposed the extension.<sup>48</sup> For its part, OCS stipulated to the extension in the hope of mitigating the same concern: PacifiCorp’s pattern of delivering “last minute modeling results that are included in the final IRP, without first presenting the results in public input meetings and allowing time for stakeholders to meaningfully respond.”<sup>49</sup> That is, the OCS worried PacifiCorp would deliver information too late for it to matter.

Despite the five-month extension, PacifiCorp disclosed its final preferred portfolio to stakeholders only two business days before filing the 2021 IRP on September 1, 2021. PacifiCorp protests it provided an “indicative preferred portfolio” that was “broadly consistent” with the final preferred portfolio in meetings held June 24-25, 2021, *i.e.* a little more than a month prior to filing the final IRP.<sup>50</sup> For context, this meeting in late June 2021 was the first time

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<sup>47</sup> 2019 Order at 19.

<sup>48</sup> The DPU cited delays that have plagued prior years’ IRPs and emphasized the importance of transparency and stakeholders having enough time for analysis to meaningfully participate. *See supra* at 10-11.

<sup>49</sup> OCS’s Comments filed March 3, 2021 at 2.

<sup>50</sup> PacifiCorp’s Reply at 12.

PacifiCorp informed stakeholders of its decision not to model new natural gas.<sup>51</sup> PacifiCorp provided meeting materials “after the close of business the day before the meeting.”<sup>52</sup>

To remedy these issues with respect to future IRPs, DPU requests the PSC require PacifiCorp to file a “draft IRP” on February 1, approximately 58 days prior to the final IRP’s due date. PacifiCorp opposes the change, contending the purposes of “a draft are already accomplished through the robust stakeholder feedback process as part of the IRP’s development.”<sup>53</sup> We cannot accept PacifiCorp’s declaration, however, that the “current feedback process is superior to a draft IRP.” Especially given PacifiCorp’s consistent disregard for meaningful, informed stakeholder participation throughout the process.

PacifiCorp continued its pattern, established in prior years, of depriving stakeholders of any opportunity for meaningful input by failing to timely disclose meeting materials. PacifiCorp was seemingly aware of its commitment, from 2019, to comply with Guideline 3 by providing meeting materials to stakeholders, at least, three business days in advance: early in the process, PacifiCorp provided the materials on exactly the third day prior on five different occasions.<sup>54</sup> Yet, later in the process, PacifiCorp appears to have abandoned any meaningful effort to comply. The DPU references a half dozen meetings for which PacifiCorp provided the meeting materials either the morning of the meeting or the evening before the meeting (after close of business).<sup>55</sup>

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<sup>51</sup> DPU’s Comments at 11.

<sup>52</sup> *Id.*

<sup>53</sup> PacifiCorp’s Reply at 13.

<sup>54</sup> DPU’s Comments filed March 4, 2022 at 10.

<sup>55</sup> *Id.*; *see also* OCS’s Comments filed March 4, 2022 at 3 (complaining PacifiCorp provided presentation materials “on the morning of the day of the meeting for the last three IRP Public Input meetings”).

DPU articulates well the manner in which PacifiCorp’s conduct prejudices other parties: “[w]hen new information is presented during a public input meeting, the time to give input that can be actionable has often passed, with [PacifiCorp] having already moved forward.”<sup>56</sup> Thus, “[b]y not having access to meeting materials, parties are severely handicapped.” DPU notes, with respect to PacifiCorp’s decision not to model natural gas, “by the time parties [learned of and] asked questions about the decision, [PacifiCorp] was already well into running Plexos modeling.”<sup>57</sup>

PacifiCorp offers no explanation in its Reply Comments for this pattern of untimeliness, focusing, instead, on its argument the current process is so robust that the PSC should deny DPU’s request to require PacifiCorp to file a draft IRP in future cycles.<sup>58</sup>

This recent and escalating pattern is unacceptable. Stakeholders invest substantial time and resources to participate in the IRP planning process. The purpose of the process is not to allow them an early preview of what PacifiCorp has unilaterally elected to do. The purpose is to allow them an opportunity to provide meaningful feedback at each stage of a *collaborative* process. Guideline 3 is clear: the IRP is to be developed “in consultation” with stakeholders who must enjoy “ample opportunity for public input and information exchange *during the development of [the plan].*”

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<sup>56</sup> DPU Comments at 10.

<sup>57</sup> *Id.*

<sup>58</sup> PacifiCorp merely notes it “appreciates the feedback from OCS and DPU regarding the stakeholder process and will continue to look for ways to improve the IRP stakeholder process and certainty around the public-input meeting schedule and deliverables.” (PacifiCorp’s Reply at 12.)

Based on our observations in this order, we find stakeholders did not enjoy an ample opportunity to provide input and exchange information during the development of the 2021 IRP. PacifiCorp waited until an egregiously late date to inform them of something as fundamental and unprecedented as its unilateral decision to exclude natural gas resources from its modeling. At the least, the possibility of such an exclusion ought to have been discussed and the effects illustrated at a much earlier stage. Further, PacifiCorp failed on at least a half-dozen occasions to honor its minimal commitment to provide stakeholders with meeting materials at least three days in advance, providing the information instead just hours before stakeholders would be expected to offer informed feedback. This deficiency even applied to the disclosure of the pivotal decision to exclude natural gas resources.

We conclude PacifiCorp failed to comply with Guideline 3 in developing the 2021 IRP.

- c. We decline to acknowledge the 2021 IRP because of PacifiCorp's violation of the Guidelines.

In determining whether to acknowledge an IRP, we consider whether it “substantially complies” with the Guidelines.<sup>59</sup> In our 2017 Order, we found PacifiCorp did not comply with Guideline 3, but nevertheless acknowledged the 2017 IRP. We noted there are eight Guidelines, some with multiple subparts, and that “[f]ailing to comply with one Guideline does not automatically answer the question of whether the utility has achieved substantial compliance.”<sup>60</sup> Though we recognized Guideline 3 “is a pivotal one[,]” we concluded that on balance PacifiCorp had substantially complied with the Guidelines, noting our “determination [was] not an obvious

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<sup>59</sup> 2017 Order at 8.

<sup>60</sup> *Id.* at 44-45.

one.”<sup>61</sup> Importantly, we cautioned that we expected PacifiCorp to fully comply with Guideline 3 in the future.

In 2019, when parties again complained of last-minute disclosures, we accepted PacifiCorp’s commitment to provide materials three business days in advance.

Despite these regulatory directives in the last two IRP cycles, PacifiCorp provided meeting materials to stakeholders on the eve or morning of meetings on a half-dozen different occasions during the 2021 IRP process. In the case of PacifiCorp’s unilateral decision not to model natural gas, stakeholders remained in the dark about this decision until little more than a month before PacifiCorp filed the 2021 IRP. When PacifiCorp finally disclosed this decision, it did so by providing meeting materials after close of business the day before the meeting, which – with so little time left – would be stakeholders only meaningful opportunity to provide input. In its Reply Comments, PacifiCorp makes no attempt to reconcile its conduct with its earlier commitment to use its best efforts to provide materials three days in advance.

These failures are not a mere technicality; cumulatively, they defeat the very purpose of the IRP process. As comments and our orders going back numerous years now show: stakeholders cannot meaningfully participate when data and decisions are withheld until there is not ample opportunity to review, analyze, and prepare. Such failures convert the process into presentation of a preconceived agenda, not the collaborative process Guideline 3 requires.

PacifiCorp’s persistent disregard for Guideline 3 is alone sufficient to support our conclusion that it has not substantially complied with the Guidelines, but unlike 2017, PacifiCorp

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<sup>61</sup> *Id.* at 44.



violated other Guidelines. While the untimely process by which PacifiCorp informed stakeholders of its decision to exclude natural gas ran afoul to Guideline 3, its decision to do so was plainly inconsistent with Guidelines 4(b) and 4(i). As a long-accepted, staple peaking resource, natural gas units are patently a “present” and “technically feasible” resource. As we concluded above,<sup>62</sup> PacifiCorp’s unilateral decision to forcibly exclude natural gas from its models, without meaningful stakeholder input, resulted in “premature foreclosure” of this resource in violation of Guidelines 4(b) and 4(i).

We appreciate the complexity PacifiCorp faces in preparing its IRP, which is one of the reasons we have afforded PacifiCorp some latitude in the past two IRP cycles, but rather than respect our regulatory directives and work to improve its process, PacifiCorp showed even greater disregard for stakeholder participation in the development of its 2021 IRP. In light of these multiple violations, we simply cannot conclude PacifiCorp has substantially complied with the Guidelines. We decline to acknowledge the 2021 IRP.

- d. We decline to impose new requirements or Guidelines in this docket, but any party may file a request for agency action to consider reforms to the Guidelines.

Frustrated with PacifiCorp’s actions, DPU has repeatedly asked that we impose additional requirements to the process. This year, DPU asks we require PacifiCorp to file a draft IRP by February 1 of the pertinent year.

In the past, we have expressed our reluctance to “micromanage the IRP process beyond the language contained in Guideline 3.”<sup>63</sup> This reluctance stems from our awareness that the IRP

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<sup>62</sup> *See supra* at 8.

<sup>63</sup> 2017 Order at 22.

process exists to facilitate collaborative development of the plan. Imposing an ever greater regime of procedural deadlines, we fear, could transform the process into something more akin to adjudication than collaboration. Indeed, PacifiCorp repeatedly reminds us that flexibility is needed to ensure the process identifies the best portfolio possible. While we accept this premise, PacifiCorp cannot effectively shut stakeholders out of the process by consistently making last-minute decisions and disclosures.

We are hopeful that our decision not to acknowledge the 2021 IRP will motivate PacifiCorp to show greater respect for stakeholders' participation in the next IRP development cycle. PacifiCorp and stakeholders should communicate and collaborate more effectively in the future, rendering our imposition of additional procedural deadlines unnecessary. Consequently, we decline to adopt any new procedures at this time. Any party who believes reforms to the Guidelines are necessary may file a request for agency action.

#### **4. Order**

For all of the reasons discussed herein, we find PacifiCorp failed to substantially comply with the Guidelines during its development of the 2021 IRP. Consequently, we do not acknowledge the 2021 IRP.

DATED at Salt Lake City, Utah, June 2, 2022.

/s/ Thad LeVar, Chair  
/s/ David R. Clark, Commissioner  
/s/ Ron Allen, Commissioner

Attest:  
/s/ Gary L. Widerburg  
PSC Secretary  
DW#324294

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the PSC within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC does not grant a request for review or rehearing within 30 days after the filing of the request, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on June 2, 2022, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

Data Request Response Center ([datareq@pacificorp.com](mailto:datareq@pacificorp.com), [utahdockets@pacificorp.com](mailto:utahdockets@pacificorp.com))  
PacifiCorp

Jana Saba ([jana.saba@pacificorp.com](mailto:jana.saba@pacificorp.com))  
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