

**Exh. ASR-3
Docket UE-220376
Witness: Andrew Rector**

**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-220376

**EXHIBIT TO
TESTIMONY OF**

ANDREW RECTOR

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

*Docket UE-210829, Response to PacifiCorp's Petition for Exemption
on Behalf of Commission Staff*

October 21, 2022

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
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RESPONSE TO PACIFICORP'S
PETITION FOR EXEMPTION ON
BEHALF OF COMMISSION STAFF

I. INTRODUCTION

I The Commission should deny PacifiCorp's (PacifiCorp or Company) petition for exemption from part of the definition of "alternative lowest reasonable cost and reasonably available portfolio" in WAC 480-100-605. PacifiCorp states that the purpose of the request is to allow it to include in its forthcoming Clean Energy Implementation Plan (CEIP) an alternative lowest reasonable cost and reasonably available portfolio (Alternative LRCP) that does not incorporate the social cost of greenhouse gases (SCGHG).¹ The Company argues that this exemption is needed to avoid a mismatch between the Alternative LRCP and the preferred portfolio the Company intends to include in the final CEIP, which does not incorporate the SCGHGs. This request is contrary to the guidance the Commission provided in the order adopting the new CEIP and Integrated Resource Planning (IRP) rules. In the adoption order, the Commission concluded that accounting for the SCGHG in the Alternative LCRP is required by statute.² The mismatch between the preferred portfolio and

¹ *In re PacifiCorp's Petition for Exemption of WAC 480-100-605*, Docket UE-210829, p. 1, ¶ 1 (Nov. 1, 2021) (Petition).

² *In re 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 R-601, p. 46, ¶ 128; *but see Id.* at 68 ¶ 2 – 69 ¶ 6 (Commissioner Balasbas dissenting from the majority's conclusion.) (Dec. 28, 2021) (Adoption Order).

Alternative LRCP can be addressed by PacifiCorp incorporating the SCGHGs into both preferred portfolio and Alternative LRCP in its final CEIP, as required by rule. While the Company asserts that there are practical or technical difficulties preventing it from including the SCGHGs in the Alternative LRCP, these claims are not supported by a sufficiently detailed explanation or evidence. Staff believes that the Company can and should include in its final CEIP an Alternative LRCP and a preferred portfolio that both account for the SCGHG.

II. RELIEF REQUESTED

2 Staff requests that the Commission issue an order denying PacifiCorp's petition for an exemption and direct the Company to include the SCGHG in both the Alternative LRCP and the CEIP preferred portfolio.

III. STATEMENT OF FACTS

3 On February 11, 2021, in PacifiCorp's 2021 IRP, Docket UE-200240, the Commission granted an exemption from the new rules' requirement to hold an open meeting hearing on the Company's Draft IRP. On April 1, 2021, the Company filed a final IRP. On June 10, 2021, the Commission issued Order 02 in the same docket, finding that the Company had filed "an incomplete Final IRP."³ The Commission required the Company to file a completed Final IRP by September 1, 2021.⁴ On July 9, 2021 in Docket UE-210223, the Commission issued Order 01 which granted, with conditions, the Company's petition for exemption, effectively continuing the due dates of PacifiCorp's draft CEIP and final CEIP to November 1, 2021 and January 1, 2022 respectively, the latter deadline being required by statute.

³ Docket UE-200420, Order 02, p. 5 ¶ 23 (June 10, 2021).

⁴ *Id.* at 5 ¶ 27.

4 On November 1, 2021, PacifiCorp filed in this docket a petition for exemption, requesting that the Commission “issue an order approving an exemption from the requirement set forth in WAC 480-100-605, which defines the “alternative lowest cost and reasonably available portfolio” to include the SCGHG “in the resource acquisition decision.”⁵ Specifically, the Company requests that “the Commission exempt the Company from the requirement that the Alternative Portfolio “include the social cost of greenhouse gases in the resource acquisition decision.”⁶

VI. ARGUMENT

5 PacifiCorp has not met its burden to demonstrate that the requested exemption is in the public interest under WAC 480-07-110. The exemption is contrary to the Commission’s previously stated interpretation of statute as it relates to the SCGHG’s inclusion in the Alternative LRCP.⁷ The mismatch issue raised by the Company can be resolved by PacifiCorp following commission rule, which requires that both the CEIP’s preferred portfolio and alternative LRCP account for the SCGHGs. While the Company claims that this solution “creates other problems, such as incremental costs associated with retirements of resources that are not cost-allocated to Washington”⁸ and “does not provide anything close to a reasonable estimate of the costs that customers would likely bear”⁹, the Company offers no evidence to substantiate those claims and does not explain why costs that are not jurisdictionally allocated to Washington customers could not be excluded from the incremental cost calculation. Rather than arguing that an exemption is warranted in these circumstances, at times the petition appears to reject the SCGHG rule as a whole. It states,

⁵ Petition at 1, ¶ 1.

⁶ *Id.* at 2 ¶ 4.

⁷ Adoption Order at 47 ¶ 129.

⁸ Petition at 4 ¶ 8.

⁹ *Id.*

with respect to a hypothetical pair of preferred and alternative portfolios (both of which incorporate the SCGHG) that: “the calculation does not provide anything close to a reasonable estimate of the costs that customers would likely bear”.¹⁰ Staff respectfully disagrees. The legislature and the Commission have concluded that IOUs should calculate and consider the real, overall, costs to customers during the utility planning process, including the social cost of greenhouse gas emissions. The purpose of the SCGHG concept is precisely to account for costs that are not found on the customer’s billing statement. Those costs are borne indirectly, but they are no less real.

6 Finally, the incremental cost of compliance rules, as written, affords PacifiCorp the ability to propose an alternative incremental cost methodology, as long as the proposal still complies with RCW 19.405.040 and 19.405.050 at the lowest reasonable cost.¹¹ Staff understands that PacifiCorp should have the necessary data in hand to elect such an alternative incremental cost methodology by the Company’s final CEIP filing.¹²

A. The Request For Exemption Is Contrary To Statute Based On The Commission’s Interpretation Outlined In The Rulemaking Adoption Order

7 RCW 19.405.060(5) required that the Commission “adopt rules establishing the methodology for calculating the incremental cost of compliance under this section, as compared to the cost of an alternative lowest reasonable cost portfolio of investments that are reasonably available.” The Commission fulfilled this duty when it issued the CEIP/IRP

¹⁰ Petition at 4 ¶ 8.

¹¹ WAC 480-100-660(1)(c). However, note that the Company’s petition does not seek to merely include the portfolios discussed in the petition as an alternative incremental cost methodology, as WAC 480-100-660(1)(c) allows. Therefore, even if the Commission were to liberally construe the pleading as a request to include these portfolios as part of an alternative methodology, the Company would still need to file a final CEIP that included a rule-compliant preferred portfolio and rule-compliant Alternative LRCP.

¹² Staff observe PacifiCorp did run its 2021 IRP preferred portfolio using a SCGHG price-policy scenario, even if the Company did not ultimately select that modeling scenario as its 2021 IRP solution. *See* P02-MM-CETA-SC in Table 9.15 in PacifiCorp’s [2021 IRP Volume I](#), p. 305, Docket UE-200420.

rules in Dockets UE-191023 and UE-190698. The question of whether the Alternative LRCP should incorporate the SCGHG was a topic of much debate and discussion during those rulemakings, and the Commission specifically addressed the issue in the adoption order.¹³

8 The Commission’s rules in WAC 480-100-605, -620, and -640 make clear that the SCGHGs must be incorporated in the following portfolios: 1) the IRP preferred portfolio¹⁴; 2) the IRP Alternative LRCP¹⁵; 3) the CEIP’s preferred portfolio¹⁶; and 4) the CEIP’s Alternative LRCP.¹⁷ In the adoption order, the Commission interpreted the Clean Energy Transformation Act (CETA) to require that the SCGHG be incorporated into the incremental cost calculation: “We find that including the SCGHG in the baseline portfolio is required by statute.”¹⁸ ... “The utility must provide a description in its CEIP of how the SCGHG emissions are modelled and incorporated in its preferred portfolio.”¹⁹ Therefore, the request made by PacifiCorp is not simply contrary to commission rule, granting the request would likely require that the Commission change its current statutory interpretation regarding the SCGHGs and the incremental cost calculation²⁰ less than a year after the adoption order was

¹³ Adoption Order at 46 ¶ 128- 48 ¶ 132 (“We find that including the SCGHG in the baseline portfolio is required by statute.”) *but see Id.* at 68 ¶ 2 – 69 ¶ 6 (Commissioner Balasbas dissenting from the majority’s conclusion.)

¹⁴ WAC 480-100-620(11)(j); RCW 19.280.030(3)(a).

¹⁵ WAC 480-100-620(10)(a).

¹⁶ Adoption Order at 17 ¶ 37; *but see Id.* at 68 ¶ 2 – 69 ¶ 6 (Commissioner Balasbas dissenting from the majority’s conclusion.)

¹⁷ WAC 480-100-640(7); WAC 480-100-660(4).

¹⁸ Adoption Order at 46 ¶ 128- 48 ¶ 132

¹⁹ *Id.* at 17 ¶ 37.

²⁰ The scope of the Company’s request for exemption is not clear. If the exemption sought extends to the *actual* incremental cost calculation filed at the end of the four-year compliance period, then the request unequivocally conflicts with the Commission’s statutory interpretation in the adoption order. However, if the exemption request is limited to the *projected* incremental cost calculation under WAC 480-100-640, it would not technically conflict with the Commission’s interpretation of statute, because a projected incremental cost calculation, while important, is not a statutory requirement. However, even if the petition’s requested exemption is limited to the projected incremental cost, Staff would still oppose this request. The purpose of the projected incremental cost calculation is to ensure, as much as possible, that the plan approved by the

issued. As discussed below, the petition neither provides sufficient reason to grant an exemption from rule, nor to reconsider the Commission's current interpretation of statute.

B. The Company Cannot Use Its Noncompliance IRP Rules As Leverage To Receive An Exemption From CEIP Rules

9 The Company's primary argument in favor of granting the exemption is that this would avoid a mismatch between the preferred portfolio it developed in the IRP (which did not incorporate SCGHGs) with the Alternative LRCP required for the incremental cost calculation. Staff acknowledges that comparing an alternative LRCP that incorporates SCGHGs with a preferred portfolio that does not incorporate SCGHGs would create a mismatch in the incremental cost calculation. However, the solution to this issue is for the Company to file an Alternative LRCP and a preferred portfolio that both incorporate the SCGHGs, as required by Commission rule, order, and statute. The mismatch is not created by the commission rule's requirement to include the SCGHGs in the Alternative LRCP. The mismatch is created by the fact - which the Company acknowledges in its petition²¹ - that the preferred portfolio from the Company's latest IRP does not incorporate the SCGHGs as required by rule and statute,²² and the Company now seeks to use that portfolio in the CEIP.

10 While CETA requires that the CEIP be "informed by" the Clean Energy Action Plan (a component of the IRP) and that the specific actions identified in the CEIP must be

Commission is consistent with the statutory requirements regarding incremental cost. If the projected incremental cost calculation does not include the SCGHG, and by statute the actual incremental cost calculation made at the end of the four-year period must include the SCGHG, then the projection provides absolutely no value. If Commission knows that the portfolios used in the projected incremental cost calculation are inconsistent with statute and will need to change for the actual incremental cost calculation, then the projection gives the Commission no real indication of whether the plan it is considering will need to use the incremental cost alternative compliance pathway. This is a critical factor when the Commission considers whether a CEIP should be approved, denied, or approved with conditions. Lastly, Staff maintains that a projected incremental cost calculation that is as accurate as possible is in PacifiCorp's best interest. A more accurate projected incremental cost calculation and, thus more accurate CEIP, would better enable the Company to leverage the 2022 – 25 compliance period to meet its CETA requirements.

²¹ Petition at 3 ¶ 6 – 4 ¶ 8.

²² WAC 480-100-620(11)(j); RCW 19.280.030(3)(a).

“consistent with” the IRP, this does not mean that the Commission is required to accept a utility’s IRP preferred portfolio or alternative LRCP in the following CEIP without question. The “informed by” and “consistent with” statutory language merely indicates that the CEIP should build off of the latest IRP’s analysis, it does not require the Commission to accept the utility’s IRP analysis in the CEIP without modification or review. Such a reading of the statute would undercut the entire purpose of the CEIP review process in RCW 19.405.060.

11 Furthermore, the absence of objections or complaints from Staff and other stakeholders in the IRP docket does not imply acquiescence to or agreement with any of the methods used or facts asserted in PacifiCorp’s latest IRP. This year’s IRP/CEIP cycle timeline has been compressed, particularly in the case of PacifiCorp, and Staff has limited time and resources. This year Staff intentionally focused resources on the CEIP process because the CEIPs can be litigated,²³ and most substantive issues that Staff might have with an IRP can be raised - and if necessary contested - in the CEIP docket. The adoption order indicates that the Commission anticipated that certain issues arising in both an IRP and the following CEIP docket could be contested in the CEIP docket, at least to the extent that those overlapping issues are relevant to the CEIP.²⁴

²³ This does not imply that the Commission does not have the authority to enforce the IRP statutory requirements and commission rules regarding the IRP process.

²⁴ See Adoption Order at 19 ¶ 43 (Addressing the possibility of requiring utilities to account for upstream emissions: “Thus, while we support the current utility practice of including upstream emissions in IRP modeling, it is not a current requirement of these rules ... We anticipate that this issue may come before the Commission when it reviews regulated utilities’ initial CEIPs, but decline to be more prescriptive on this issue at this time.”)

C. This Request For Exemption Came Unnecessarily Late In The CEIP Process, And The Issue Could Have Been Raised Much Earlier

12 PacifiCorp was aware that including the SCGHG in the Alternative LRCP and the CEIP preferred portfolio was required by commission rule since the final rules were adopted almost a year ago. Instead of including this request for exemption in the Company's April 1, 2021 petition to continue the due dates for the initial draft CEIP and final CEIP, the Company filed this petition on November 1, 2021. Staff worked diligently with the Company throughout this process to identify and address issues such as this one as early as possible. Staff requested the Company's IRP to CEIP modeling workplan as a condition of granting the Company's request for continuance as part of that effort. Unfortunately, the workplan made no mention of the issues raised in the current petition. The Commission should consider this, as well as the leniency it has already afforded the Company throughout this IRP/CEIP cycle.

D. The Company Has Not Supported The Claims In Its Petition With Sufficient Evidence To Meet The Public Interest Standard Under WAC 480-07-110

13 Under WAC 480-07-110(1),²⁵ an exemption may be granted "...if the exemption or modification is consistent with the public interest, the purposes underlying regulation, and applicable statutes." PacifiCorp has not met this standard. The mismatch issue can be addressed by the Company filing a CEIP preferred portfolio that accounts for the SCGHG. PacifiCorp provides two brief arguments against this solution. The first argument is that it "creates other problems" such as creating incremental costs associated with resources that are not allocated to Washington state customers. But the petition does not explain why a rule-compliant set of portfolios would necessarily lead to that result, it simply makes an

²⁵ Which applies to a request for exemption from WAC 480-100-605 through WAC 480-100-008.

assertion. The second argument appears to reject the concept of ever including SCGHG in incremental cost calculations. The petition argues that using portfolios that account for the SCGHGs in the incremental cost calculation would “not provide useful rough estimates of costs customers may pay.”²⁶ This line of argument is at odds with the conclusions reached by the majority in the adoption order because it implies that the SCGHG is not a cost that customers pay. The argument challenges the rule itself; it does not explain why an exemption is warranted in these specific circumstances. In short, these arguments are insufficient to meet the public interest standard.

VII. CONCLUSION

14 Staff understands that this process is new to all parties, and Staff acknowledges that the Commission signaled it would be patient during this first round of IRPs and CEIPs under these new rules. PacifiCorp has received leniency both during the most recent IRP and in the current CEIP docket, in many cases up to the limits of what the statute allows. Staff acknowledges that CETA requires difficult process changes for all IOUs, particularly those operating in multiple jurisdictions. But those difficulties do not change the statutory obligations that must be implemented through Commission rule and order, and the incremental cost calculation is a crucial aspect of the CEIP.

15 The Commission should issue an order denying PacifiCorp’s petition and requiring that both the Company’s Alternative LRCP and the CEIP preferred portfolio include the SCGHG.

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²⁶ Petition at 4 ¶ 9.

DATED December 6, 2021.

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) 664-1187
nash.callaghan@utc.wa.gov