

**Exh. ASR-6
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, Order 01, Denying Petition for Exemption

October 21, 2022

Service Date: December 13, 2021

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of
PACIFICORP d/b/a PACIFIC POWER
& LIGHT COMPANY,

Petitioner,

Seeking Exemption from the Provisions
of WAC 480-100-605

DOCKET UE-210829

ORDER 1

DENYING PETITION FOR
EXEMPTION

BACKGROUND

- 1 On December 28, 2020, the Washington Utilities and Transportation Commission (Commission) adopted new rules for both integrated resource plans and clean energy implementation plans for regulated utilities. In General Order R-601 in Dockets UE-191023 and UE-190698, the Commission determined that including the social costs of greenhouse gases (SCGHG) in the baseline portfolio is required by statute.¹ The baseline portfolio is the alternative lowest reasonable cost and reasonably available portfolio (Alternative LRCP).²
- 2 On November 1, 2021, PacifiCorp d/b/a Pacific Power and Light Company (PacifiCorp or the Company) filed a petition (Petition) with its draft clean energy implementation plan (CEIP) requesting an exemption from the provisions of WAC 480-100-605, which requires that the “alternative lowest cost and reasonably available portfolio” include the SCGHG “in the resource acquisition decision.” On November 9, 2021, the Commission issued a notice of opportunity to comment on the Petition by December 6, 2021.
- 3 On December 6, 2021, Renewable Northwest, the Public Counsel Unit of the Attorney General’s Office (Public Counsel), Earthjustice, NW Energy Coalition (NWECC), the Sierra Club, and Commission staff (Staff) submitted written comments.
- 4 Renewable Northwest recommends the Commission deny PacifiCorp’s Petition. Renewable Northwest argues that allowing an exemption from provisions of WAC 480-

¹ Dockets UE-191023 & UE-190698 (*Consolidated*), General Order 601, pp. 47, ¶ 129 (CETA Rulemaking Order) (Dec. 28, 2020).

² *Id.* at ¶ 108.

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100-605 would lead to an incomplete calculation for the Company’s CEIP. Renewable Northwest further asserts that this calculation would fall short of the requirements set out in the Clean Energy Transformation Act (CETA) and would thus be contrary to the public interest.³

5 Public Counsel also recommends the Commission deny the Petition. Public Counsel argues that the Commission previously found that the inclusion of the SCGHG in the baseline portfolio is required by RCW 19.280.030 and, therefore, the Commission has no authority to waive that requirement. Public Counsel asserts that the appropriate avenue for challenging the Commission’s interpretation is to file a petition for reconsideration of General Order 601.

6 Earthjustice, NWEA, and the Sierra Club additionally recommend the Commission deny the Petition, arguing that CETA requires that the “alternative lowest cost and reasonably available portfolio” include the SCGHG “in the resource acquisition decision.”⁴

7 Staff reviewed the Petition and believes that, based on the Commission’s interpretation of the governing statute in General Order R-601, the Petition should be denied. Staff further recommends the Commission require PacifiCorp to include in its final CEIP both an Alternative LRCP and a preferred portfolio that incorporates the SCGHG, as required by WAC 480-100-605 and RCW 19.280.030(3)(a). Staff contends that the Company must use these portfolios in its calculation of projected incremental cost, as required by WAC 480-100-640(7).

DISCUSSION

8 We deny the Company’s Petition for an exemption from WAC 480-100-605, which requires that the “alternative lowest cost and reasonably available portfolio” include the SCGHG “in the resource acquisition decision.” Under WAC 480-07-110(1), the Commission may grant an exemption from any of its rules if doing so is consistent with the public interest, the purposes underlying regulation, and applicable statutes. We find that the Petition, which requests exemptions from both rule and statute, fails to meet this standard for the reasons discussed below.

³ RCW 19.280.030

⁴ *Id.*

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- 9 First, PacifiCorp argues that the exemption is necessary to avoid a mismatch between its preferred portfolio and its forthcoming Alternative LRCP because there are practical difficulties preventing the Company from including the SCGHG in its Alternative LRCP. Staff correctly observes, however, that the Company’s claims are not supported by evidence. Accordingly, the record is insufficient to evaluate PacifiCorp’s claim.
- 10 Second, PacifiCorp’s Petition seeks an exemption from both Commission rule and state law. In General Order R-601, we found that the requirement to include the SCGHG set out in WAC 480-100-605 is also required in statute:

While the phrase “selecting and evaluating” in RCW 19.280.030(a)(i) and (iii) could be read to mean selection only within the IRP and not in actual investment decisions, RCW 19.280.030(a)(ii), which states that the SCGHG should be included when developing IRPs and CEIPs, contradicts that interpretation. Given that context, if subsections -.030(a)(i) and (iii) were in fact merely intended as planning requirements, not required for actual investing decisions, then subsection -.030(a)(ii) is redundant. We decline to so construe the statute. Consistent with our interpretation of the Legislature’s intent, we include SCGHG in the baseline portfolio’s definition.⁵

Granting PacifiCorp’s Petition would thus require the Commission to change its current statutory interpretation related to the SCGHG and the incremental cost calculation. We decline to revisit our decision in General Order R-601 and agree with Public Counsel that PacifiCorp’s Petition is not the appropriate avenue for the Company to seek reconsideration of a Commission order. Even if it were, PacifiCorp failed to present any compelling reason for the Commission to modify its statutory interpretation. Accordingly, we conclude that PacifiCorp failed to meet its burden to demonstrate that the requested exemption is in the public interest.

- 11 Finally, we agree with Staff’s recommendation and require PacifiCorp to include in its final CEIP both an Alternative LRCP and a preferred portfolio that incorporates the SCGHG as required by WAC 480-100-605 and RCW 19.280.030(3)(a). The Company

⁵ *Id.* at ¶ 131.

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must use these portfolios in its calculation of projected incremental cost, as required by WAC 480-100-640(7).

FINDINGS AND CONCLUSIONS

- 12 (1) The 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 electric companies.
- 13 (2) PacifiCorp is an electric company and a public service company subject to Commission jurisdiction.
- 14 (3) On November 1, 2021, PacifiCorp filed a Petition with the Commission seeking exemption from WAC 480-100-605, which requires that the “alternative lowest cost and reasonably available portfolio” include SCGHG “in the resource acquisition decision.”
- 15 (4) This matter came before the Commission at its regularly scheduled meeting on December 9, 2021.
- 16 (5) After reviewing PacifiCorp’s Petition and giving due consideration to all relevant matters, the Commission finds that the Petition should be denied, and the Company must incorporate the SCGHG as outlined in paragraph 11, above.

ORDER

THE COMMISSION ORDERS:

- 17 (1) PacifiCorp d/b/a Pacific Power & Light Company’s Petition for Exemption from WAC 480-100-605 is denied.
- 18 (2) PacifiCorp d/b/a Pacific Power & Light Company incorporate the SCGHG as outlined in paragraph 11 above.
- 19 (3) The Commission retains jurisdiction over the subject matter and PacifiCorp d/b/a Pacific Power & Light Company to effectuate the provisions of this Order.

Dated at Lacey, Washington, and effective December 13, 2021.

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WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

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DISSENTING OPINION OF COMMISSIONER BALASBAS

- 1 While I recognize that the rules as adopted by the Commission in Dockets UE-191023 and UE-190698 are valid, I write separately to reiterate my position regarding the statutory interpretation and definition of “alternative lowest reasonable cost and reasonably available portfolio” (Alternative LRCP).⁶ While my colleagues read the statute to require inclusion of the social cost of greenhouse gases (SCGHG) in the Alternative LRCP, I disagreed with that interpretation.

- 2 I believe that it was within the Commission’s authority to interpret this ambiguous aspect of the statute. However, my opinion remains that CETA does not require inclusion of the SCGHG in the Alternative LRCP. Under my interpretation of the statute, it is within the Commission’s authority to consider and grant the Company’s petition for an exemption from the current rule if doing so meets the public interest standard. For the policy reasons I discussed in my adoption order dissent last year,⁷ I believe that this petition does meet that standard, and therefore should be granted.

JAY M. BALASBAS, Commissioner

⁶ *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. 68 ¶ 2 – 69 ¶ 6 (Commissioner Balasbas dissenting from the majority’s conclusion.) (Dec. 28, 2020) (Adoption Order).

⁷ *Id.* at 69 ¶ 5-6.