

**Exh. ASR-2
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, PacifiCorp's Petition for Exemption from WAC 480-100-605

October 21, 2022

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

PACIFICORP, dba PACIFIC POWER
& LIGHT COMPANY

Petitioner,

**PacifiCorp’s Petition for Exemption of
WAC 480-100-605**

I. INTRODUCTION

I In accordance with Washington Administrative Code (WAC) 480-100-008, 480-07-110, and WAC 480-07-370(3), PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp or Company) petitions the Washington Utilities and Transportation Commission (Commission) to issue an order approving an exemption from the requirement set forth in WAC 480-100-605, which requires that the “alternative lowest cost and reasonably available portfolio” include the social cost of greenhouse gases (SCGHG) “in the resource acquisition decision.” The Company believes this request is in the public interest because it allows for a more accurate calculation of the incremental costs of compliance with the Clean Energy Transformation Act, specifically RCW 19.405.040 and 19.405.050. This will allow the Company to make a meaningful calculation that furthers the customer protection purposes of RCW 19.405.060(3), without impact on the actions that will be proposed in the Company’s Clean Energy Implementation Plan (CEIP). The Company’s proposed exemption solely affects the use of SCGHG for the limited purpose of calculation of incremental cost and would not affect the Company’s obligation to employ SCGHG in a variety of other Commission processes.

2 PacifiCorp is an electric company and public service company in the State of
Washington within the meaning of RCW 80.04.010, and is subject to the Commission’s
jurisdiction with respect to its prices and terms of electric service to retail customers in
Washington. The Company provides electric service to approximately 135,000 retail
customers in Washington and approximately 2.0 million total retail customers in
Washington, California, Idaho, Oregon, Utah, and Wyoming.

3 PacifiCorp’s name and address:

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II. PACIFICORP’S EXEMPTION REQUEST

4 WAC 480-100-605 defines an electric company’s “alternative lowest cost and
reasonably available portfolio” (“Alternative Portfolio”) as

for purposes of calculating the incremental cost of compliance in RCW
19.405.060(3), the portfolio of investments the utility would have made and the
expenses the utility would have incurred if not for the requirement to comply with
RCW 19.405.040 and 19.405.050. The alternative lowest reasonable cost and
reasonably available portfolio must include the social cost of greenhouse gases in
the resource acquisition decision in accordance with RCW 19.280.030 (3)(a).

(emphasis added). PacifiCorp 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.”

5 PacifiCorp requests this exemption from the WAC 480-100-605 requirement to
use the SCGHG “in the resource acquisition decision” for the Alternative Portfolio only
after considering whether it would be possible for the Company to strictly comply with
the rule and produce a meaningful incremental cost calculation. The Company has

concluded that it is not possible to do so, as all possible incremental cost calculations that include SCGHG “in the resource acquisition decision” for the Alternative Portfolio lead to results that are inconsistent with the customer protection purposes of RCW 19.405.060(3).

A. Incremental cost calculations that strictly apply the rules lead to absurd results.

6 In its 2021 Integrated Resource Plan (IRP), PacifiCorp’s lowest reasonable cost portfolio (CETA Portfolio) was developed using a mid-gas, mid-carbon cost price curve. Deemed “P02-MM-CETA,” the portfolio contains actions and investments necessary to meet PacifiCorp’s public service obligations in all six states it serves, plus the specific requirements of the Clean Energy Transformation Act (CETA). P02-MM-CETA did not include an SCGHG dispatch adder “in the resource acquisition decision” because no state that PacifiCorp serves requires SCGHG to be used in this specific way.¹

7 In contrast, WAC 480-100-640 plainly requires that the Alternative Portfolio must “include the [SCGHG] in the resource acquisition decision.” If the rules were applied strictly as written, this would require PacifiCorp to compare a CETA Portfolio developed without a SCGHG (P02-MM-CETA), to an Alternative Portfolio developed with the SCGHG (P02-CETA). This produces absurd results attributable solely to that difference in assumed carbon price, namely, a significant negative incremental cost that would never actually translate to customers’ bills. A negative incremental cost makes no sense because PacifiCorp’s CETA Portfolio contains incremental investments required solely for CETA compliance, which will obviously increase – not decrease – costs for

¹ RCW 19.280.030(3)(a) requires that utilities consider the SCGHG when “developing [IRPs] and [CEAPs],” but it does not state that the SCGHG must be used when developing the preferred portfolio. PacifiCorp’s 2021 IRP meets the requirements of RCW 19.280.030(a) because it contains nine distinct portfolios that considered SCGHG.

customers. This comparison would fail to deliver on the primary purpose of the incremental cost calculation, which is customer protection.²

8 As an alternative, PacifiCorp considered adding a SCGHG cost to the CETA Portfolio, which would be called “P02-MM-CETA-SCGHG.” This portfolio could be compared to an Alternative Portfolio developed with the SCGHG (P02-SCGHG), without creating results like negative incremental costs. However, this comparison creates other problems, such as incremental costs associated with retirements of resources that are not cost-allocated to Washington. This result would require the Company to either assume that Washington customers would pay for those costs, even though they do not receive the benefits of those resources, or alternately, to assume that customers in other states will pay for resource changes necessary to comply with Washington’s public policy. In either case, the calculation does not provide anything close to a reasonable estimate of the costs that customers would likely bear, so this approach also does not meet the customer protection interests that underpin the incremental cost calculation.

9 These two potential incremental cost calculations would both technically comply with the regulatory requirement in WAC 480-100-605 to include the SCGHG “in the resource acquisition decision” for the Alternative Portfolio, but in PacifiCorp’s view, neither would meet the general statutory intent of CETA. The purpose of the incremental cost calculation is to ensure that utilities transition to clean electricity while maintaining affordable, stable rates.³ If the incremental cost calculation in a CEIP does not provide useful rough estimates of costs customers may pay, then it would be more difficult to

² RCW 19.405.010(4), *see also 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) GO R-601, ¶ 101 (Dec. 28, 2021) (“GO R-601”).

³ RCW 19.405.010(4), *see also* GO R-601, Para 101.

assess if the transition CETA promises is being made consistent with the Legislature’s intent to avoid “unreasonable costs on utility customers.”⁴

B. PacifiCorp’s proposed incremental cost calculation delivers meaningful results.

10 After determining that an incremental cost calculation done in strict compliance with WAC 480-100-605 cannot deliver useful results, PacifiCorp worked to develop an incremental cost calculation plan that would provide information that is useful to customers, regulators, and meets the customer protection principles that justify RCW 19.405.060(3).

11 PacifiCorp proposes to use portfolio P02-MM, developed in the Company’s 2021 IRP, as its Alternative Portfolio for the purposes of the incremental cost calculation required by WAC 480-100-660. Fundamentally, P02-MM is what PacifiCorp would have proposed as its preferred portfolio in its 2021 IRP, but for the requirements of CETA. This makes P02-MM the most reasonable Alternative Portfolio for the sake of incremental cost calculation because the purpose of RCW 19.405.060(3) is to identify costs “directly attributable” to compliance with RCW 19.405.040 and 19.405.050. However, P02=MM does not include SCGHG in the “resource acquisition decision,” which necessitates the exemption from WAC 480-100-605 requested in this petition.

12 From a practical perspective, using P02-MM as the Alternative Portfolio instead of a portfolio using the SCGHG “in the resource acquisition decision” results in no changes to PacifiCorp’s proposed actions during the CEIP period. Further, the actual differences in Washington-allocated resource selections during the CEIP period between P02-MM and a different Alternative Portfolio developed with the SCGHG “in the

⁴ RCW 19.405.010(2).

resource acquisition decision” are minimal. This is important because it means that the “baseline” resources are essentially the same regardless of whether SCGHG is used “in the resource acquisition decision,” so using P02-MM will not change the Company’s CETA compliance approach. Specifically, the Washington-allocated resources in P02-SCGHG portfolio cost approximately 2.12 million dollars more per year during the CEIP period on average compared to P02-MM, attributable to increased energy efficiency spending. However, PacifiCorp incorporated those higher levels of energy efficiency optimized under SCGHG into its CETA Portfolio, P02-MM-CETA, to help meet the specific requirements of RCW 19.405.040. This means that PacifiCorp is implementing the Washington-allocated actions identified in P02-SCGHG, but will be including that portfolio’s increased energy efficiency in its incremental cost calculation. This outcome is reasonable because, again, PacifiCorp never would have selected P02-SCGHG as its preferred portfolio in the absence of CETA; the increased energy efficiency spending is a direct result of CETA requirements.

13 Using P02-MM as the Alternative Portfolio is the best option for PacifiCorp’s CEIP. This option is preferable because it most accurately represents CETA’s direct impacts on the Company’s actions, and provides the most realistic estimate of incremental costs that customers may pay. This meets the customer protection purposes of the incremental cost calculation better than any other option.

C. The Commission has the authority to waive the requirement to use SCGHG in the development of the Alternative Portfolio.

14 The Commission’s authority to grant exemptions from its rules is restricted only by the limits of its statutory authority.⁵ In this case, the Commission may grant an

⁵ WAC 480-07-110.

exemption of its requirement to use the SCGHG in development of the Alternative Proposal because the underlying statute provides the Commission the discretion to not require use of SCGHG in the Alternative Portfolio.

1. The Commission has discretion to adopt an Alternative Portfolio methodology.

15 RCW 19.405.060(5)(a) provides, in part, that the Commission

must 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.

This is the only section of CETA that provides any instruction regarding the incremental cost calculation, and no part of CETA defines “alternative lowest reasonable cost portfolio of investments.”

2. The IRP and CEAP must use the SCGHG in certain cases.

16 In contrast to the substantial discretion granted to the Commission to develop an incremental cost methodology, including the Alternative Portfolio, RCW 19.280.030(3)(a) creates a clear requirement that electric utilities consider the SCGHG in their “integrated resource plans and clean energy action plans” (“CEAP”). More specifically, an electric utility must incorporate the SCGHG

as a cost adder when: (i) Evaluating and selecting conservation policies, programs, and targets; (ii) Developing integrated resource plans and clean energy action plans; and (iii) Evaluating and selecting intermediate term and long-term resource options.

This is the only substantive section of CETA that mentions the SCGHG.⁶ In fact, it is the only section of Titles 19 and 80 that mentions SCGHG at all.

⁶ Section 15 of CETA, codified at RCW 80.28.405, specifies that the SCGHG should be determined by reference to a publication of the interagency working group on social cost of greenhouse gases of the United States government.

3. The IRP and CEAP statutes do not restrict the Commission's authority to develop an Alternative Portfolio methodology.

17 As noted above, RCW 19.280.030 plainly requires the use of SCGHG in certain aspects of IRP and CEAP development. However, there is no statutory link between the Alternative Portfolio on one hand, and the IRP and CEAP on the other. Nor is there any hint in the statutes that the IRP and CEAP requirements should carry over to the CEIP.

18 The Alternative Portfolio is a component of the CEIP, which is required by RCW 19.405.060. The IRP and CEAP are required by RCW 19.280.030. RCW 19.405.060(3) and (5), which govern an electric utility's incremental cost calculation (including the Alternative Portfolio), do not reference the IRP and CEAP statute, RCW 19.280.030.⁷ Nor does RCW 19.280.030 reference the CEIP statute, RCW 19.405.060.⁸ This means that there is no textual connection between the statutory requirements of RCW 19.280.030 and RCW 19.405.060. Because there is no textual connection, there is also no requirement to impute the requirements of one of these statutes to another. Similarly, Commission orders requiring or suggesting the use of SCGHG in the IRP would not apply to the CEIP, because the CEIP is not part of the IRP.⁹

19 Despite this lack of textual connection as a matter of practical convenience, the IRP and CEAP processes are closely linked to the CEIP. The Alternative Portfolio that PacifiCorp proposes to use was developed in the Company's IRP, but the provenance of the portfolio does not pertain to the requirements for its selection for use in the CEIP.

RCW 19.405.060(1)(b)(i) does reference the CEAP and RCW 19.280.030, but that section is not germane to the incremental cost calculation.

⁸ The IRP and CEAP statute does reference several other sections of RCW 19.405, indicating that there is a relationship between the IRP and CEAP processes and several key sections of CETA – just not the CEIP section.

⁹ See, e.g. *In Re PacifiCorp's 2017 Integrated Resource Plan*, Docket UE-160353, Letter Acknowledging PacifiCorp's 2017 IRP, Attachment, 11 (May 7, 2018).

PacifiCorp used the SCGHG as required by RCW 19.280.030(3) when it developed its most recent IRP. The requirements of that statute end there.

20 The requirements of RCW 19.405.060 govern the CEIP, including specifications for the Alternative Portfolio. Those statutory requirements do not include use of SCGHG in the resource acquisition decision, so the Commission has the legal authority to waive the regulatory requirement in WAC 480-100-605 that the Alternative Portfolio use SCGHG in the resource acquisition decision.

D. . Strictly applying the rule would frustrate the purpose of RCW 19.405.060 and would “be contrary to the underlying purposes of the rule and the public interest.”

21 While the Commission has ultimate discretion to waive its own rules within the bounds of the statutes it administers, it has determined that its standard should be based on “the underlying purposes of the rule and the public interest.”¹⁰ This standard aligns with the state’s general policy to interpret laws and rules in a manner that do not frustrate a statute’s purpose.¹¹

22 Here, the purpose of the relevant statutes and regulations is to implement the legislative intent that CETA be implemented in a way that “does not impose unreasonable costs on utility customers” and maintains “stable and affordable rates” for customers.¹² To do this, utilities, the Commission, and other parties will need relevant, reasonably accurate estimates of CETA compliance costs. In PacifiCorp’s case, hewing strictly to the definition of “alternative lowest cost and reasonably available portfolio” and its inclusion of SCGHG in the resource acquisition decision would frustrate the

¹⁰ WAC 480-07-110(2)(c).

¹¹ See *Franklin Cty. Sheriff's Off. v. Sellers*, 97 Wash. 2d 317, 327 (1982).

¹² RCW 19.405.010(2), (4).

purpose of RCW 19.405.060(3), because it would be impossible to deliver an incremental cost calculation that would provide useful data for those parties. Without that data, the Commission and other parties would not be able to assess if the statutory intent of RCW 19.405.060(3) has been effected. Therefore, granting this petition for an exemption would comport both with the Commission's self-adopted standards for exemptions in WAC 480-07-110 and the state's policy to avoid interpretations that frustrate the purpose of statutes and regulations.

III. CONCLUSION

23 Based on the foregoing, the Company requests that the Commission exempt the Company from the requirement in WAC 480-100-605 to include the SCGHG in the resource acquisition decision for the Alternative Portfolio.

DATED: this 1st day of November, 2021.

Respectfully submitted,

_____/s/_____
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