

**Exh. ASR-5
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-210223, Order 01, Granting Petition for Exemption and
Motion for Continuance, Subject to Condition*

October 21, 2022

Service Date: July 9, 2021

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

PACIFICORP d/b/a PACIFIC POWER
& LIGHT COMPANY,

Petitioner,

For an exemption from the filing
deadline established by WAC 480-
100-640(1) and for continuance of a
filing deadline established by
Commission order

DOCKET UE-210223

ORDER 01

GRANTING PETITION FOR
EXEMPTION AND MOTION FOR
CONTINUANCE, SUBJECT TO
CONDITION

BACKGROUND

- 1 On December 28, 2020, the Washington Utilities and Transportation Commission (Commission) entered General Order 601 in consolidated Dockets UE-191023 and UE-190698, which adopted rules that govern Clean Energy Implementation Plans and compliance with the Clean Energy Transformation Act. The rules adopted by the Commission include Washington Administrative Code (WAC) 480-100-640(1), which requires each electric utility to file a clean energy implementation plan (CEIP) by October 1, 2021, and every four years thereafter.
- 2 In General Order 601, the Commission observed that “in the beginning the CEIP will involve a new and significant process and document, one that the utilities have never prepared, and that stakeholders, and this Commission have never reviewed.”¹ The Commission therefore found it appropriate to require electric utilities to file drafts of their first CEIPs by August 15, 2021.²
- 3 On April 1, 2021, PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp or Company) filed with the Commission a Petition for Exemption from WAC 480-100-640(1) (Petition). PacifiCorp requests that the Commission grant the Company an

¹ *In the Matter of Adopting Rules Relating to Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act*, Dockets UE-191023 & UE-190698 (Consolidated), General Order 601 ¶ 25 (General Order 601) (December 28, 2020).

² *Id.*

**DOCKET UE-210223
ORDER 01**

PAGE 2

exemption from the rule by extending the deadline for filing its 2022 CEIP until January 1, 2022.

4 Also on April 1, 2021, PacifiCorp filed a Motion to Amend General Order 601, paragraph 25 (Motion). Noting that General Order 601 requires the Company to file its 2022 draft CEIP by August 15, 2021, PacifiCorp requests that the Commission allow the Company to instead file its 2022 draft CEIP by November 1, 2021.

5 PacifiCorp submits that the relief requested in both the Company's Petition and Motion are in the public interest. The Company notes that both the 2022 draft CEIP and final CEIP will be informed by the Company's 2021 clean energy action plan (CEAP) and integrated resource plan (IRP), which are currently due on September 1, 2021.³ PacifiCorp explains that it could not have foreseen the delays and difficulties associated with the transition to the Plexos modeling software at the time General Order 601 was issued. If PacifiCorp is not provided additional time, the Company would need to file its draft CEIP ahead of the final IRP, the plan on which the CEIP depends.⁴ It would also be difficult for the Company to complete its first, final CEIP only one month after filing its final IRP, given that six months originally separated the final IRP and CEIP deadlines.⁵

6 Commission staff (Staff) reviewed the Company's Petition and Motion. Staff recommends the Commission grant PacifiCorp's Petition and Motion subject to the condition that the Company develops and files a detailed IRP-to-CEIP modeling workplan in this docket by August 15, 2021 (Workplan).

7 Staff notes that the Commission has already extended the deadline for PacifiCorp's IRP and that it favors similar flexibility for the Company's CEIP. However, Staff is concerned that the Company's Petition and Motion will have the result of compressing the Company's CEIP development timeline. The Petition will also have the effect of eliminating the "cushion" provided by the October 1, 2021, regulatory deadline, which

³ See also *In the Matter of the Petition of PacifiCorp d/b/a Pacific Power & Light Company*, Docket UE-200420 Order 02 ¶ 27 (June 10, 2021) (requiring the Company to file its final IRP by September 1, 2021).

⁴ General Order 601 at 59, ¶ 170.

⁵ April 1, 2021, per Order 03, UE-180259, (November 7, 2019).

**DOCKET UE-210223
ORDER 01**

PAGE 3

may allow the Company to bring an insufficient CEIP into compliance before the January 1, 2022, statutory deadline.⁶

8 Staff therefore recommends that the Commission grant the Company's Petition and Motion subject to the condition that the Company file a detailed IRP-to-CEIP modeling Workplan in this docket by August 15, 2021. Such a workplan should help address the root cause of PacifiCorp's 2021 planning cycle delays, including issues the Company has encountered implementing Plexos as its new modeling software.

9 Staff is concerned the modeling adjustments and refinements required to move from the IRP to the CEIP may present a host of unexpected analytical problems because no electric company has previously developed a CEIP. PacifiCorp will need to undertake more granular modeling of its Washington service territory and satisfactorily develop the specific targets and specific actions (*e.g.*, programs and projects) required for its CEIP.⁷

10 For its Workplan, Staff recommends PacifiCorp provide a transparent framework that addresses strategic questions related to CEIP development, including but not limited to the following:

- What modeling inputs or parameters does PacifiCorp need to adjust transitioning from a six-state IRP to a Washington-specific CEIP?
- What additional scenarios and/or sensitivities are necessary to comprehensively address the CEIP specific targets and actions requirements?
- What feedback loops are required to align PacifiCorp's 2021 IRP preferred portfolio and the interim targets the Company proposes for its 2022 – 2025 CEIP implementation period?⁸
- What are realistic timetables and Company resource levels required to complete modeling adjustments for a CETA-compliant, complete draft and final CEIP, by the filing deadlines?

⁶ Compare RCW 19.405.060(1)(a) (January 1, 2022, statutory deadline for final CEIP) with WAC 480-100-640(1) (October 1, 2021, regulatory deadline for final CEIP).

⁷ WAC 480-100-640(3) and (5).

⁸ See WAC 480-100-640(2) (requiring electric utilities to propose interim targets).

11 Staff engaged in discussion with the Public Counsel Unit of the Washington State Attorney General’s Office (Public Counsel), the Northwest Energy Coalition (NVEC), Renewable Northwest, and the Sierra Club. All stakeholders supported Staff’s recommended approach to addressing PacifiCorp’s Motion and Petition.

DISCUSSION

12 We grant PacifiCorp’s Petition and Motion subject to the condition that the Company file a detailed IRP-to-CEIP modeling Workplan in this Docket by August 15, 2021.

13 As a preliminary matter, we construe PacifiCorp’s Motion to Amend General Order 601 as a motion for continuance.⁹ WAC 480-07-385 permits an effected party to request a continuance of any deadline established by a Commission order provided such a request is made at least five business days prior to the deadline at issue. PacifiCorp filed its request more than four months in advance of the deadline for filing a draft CEIP established by General Order 601. Because the Motion and Petition are based on the same set of facts, we address their merits concurrently.

14 WAC 480-07-110 provides that the Commission “may grant an exemption from, or modify the application of, any of its rules in individual circumstances if the exemption or modification is consistent with the public interest, the purposes underlying regulation, and applicable statutes.”¹⁰ WAC 480-07-385(2)(a) provides that the Commission will grant a continuance if the requesting party demonstrates good cause for the continuance and the continuance will not prejudice any party or the Commission.

15 The Petition here concerns the October 1, 2021, deadline for the utility’s first CEIP, as set forth in WAC 480-100-640(1). The October 1 deadline was originally intended to align with the requirements for utilities to provide draft biennial conservation plans to their energy efficiency advisory groups.¹¹ In this case, it is consistent with the public interest to grant the Company an exemption from this rule. As we have observed, PacifiCorp has experienced significant, unexpected delays in its transition to the Plexos modeling

⁹ Pursuant to WAC 480-07-395(4), the Commission will liberally construe pleadings and motions with a view to effect justice among the parties. The Commission will consider pleadings and motions based primarily on the relief they request and will not rely solely on the name of the document.

¹⁰ *Accord* WAC 480-100-008.

¹¹ General Order 601 ¶ 22.

DOCKET UE-210223
ORDER 01

PAGE 5

software.¹² We granted an extension until September 1, 2021, for PacifiCorp to file its final IRP.¹³ For similar reasons, it is appropriate to grant the Company additional time to prepare and file its first CEIP. The public interest is best served by allowing the Company additional time, until the January 1, 2022, statutory deadline to file its first CEIP.

16 We grant the Company's Motion, subject to condition, for the same reasons. In General Order 601, the Commission found it appropriate to require electric utilities to file a draft CEIP by August 15, 2021.¹⁴ Because the Commission has already extended the deadline for PacifiCorp to file its final IRP until September 1, 2021, we find good cause exists to grant the Company additional time to file a draft CEIP, which should incorporate the results of the final IRP.

17 We do share Staff's concerns, however, that the Company will soon be facing the statutory deadline for filing a CEIP. Granting the Company's Petition has the effect of eliminating the "cushion" provided by the October 1, 2021, regulatory deadline. We thus require the Company to file a detailed IRP-to-CEIP Workplan in this Docket by August 15, 2021. At minimum, the Workplan should address the questions posed by Staff as described in paragraph 10, above.

18 The relief granted in this Order does not limit the Commission's authority to impose penalties for any future violations. Pursuant to RCW 80.04.380, "in case of a continuing violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense." If the Company is unable to meet either the November 1, 2021, deadline for the draft CEIP, or the January 1, 2022, deadline for the final CEIP, the Company is placed on notice that the Commission retains the discretion to impose penalties dating from the original deadlines as set forth in General Order 601 and WAC 480-100-640(1).¹⁵

FINDINGS AND CONCLUSIONS

19 (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,

¹² See Docket UE-200420 Order 02 ¶ 17.

¹³ *Id.* at ¶ 27.

¹⁴ CETA Rulemaking Order ¶ 25.

**DOCKET UE-210223
ORDER 01**

PAGE 6

securities, transfers of property, and affiliated interests of public service companies, including electric companies.

- 20 (2) PacifiCorp is an electric company and a public service company subject to Commission jurisdiction.
- 21 (3) WAC 480-100-640(1) requires electric utilities to file their first CEIP by October 1, 2021.
- 22 (4) General Order 601 in consolidated Dockets UE-191023 and UE-190698 requires electric companies to file draft CEIPs by August 15, 2021.
- 23 (5) Under WAC 480-07-110(1), the Commission may grant an exemption from the provisions of any rule in Chapter 480-70 WAC if doing so is consistent with the public interest, the purposes underlying regulation, and applicable statutes.
- 24 (6) Under WAC 480-07-385(2)(a), any party may request by oral or written motion a continuance of a deadline established by Commission order. The Commission will grant a continuance if the requesting party demonstrates good cause for the continuance and the continuance will not prejudice any party or the Commission.
- 25 (7) On April 1, 2021, PacifiCorp filed a Petition requesting an exemption from WAC 480-100-640(1) and a Motion for continuance requesting that the Commission allow the Company until November 1, 2021, to file its first draft CEIP and until January 1, 2022, to file its first final CEIP.
- 26 (8) This matter came before the Commission at its regularly scheduled meeting on July 8, 2021.
- 27 (9) After reviewing PacifiCorp's Petition and giving due consideration to all relevant matters and for good cause shown, the Commission finds that the requested exemption is in the public interest, consistent with the purposes underlying the regulation and applicable statutes, and that it should be granted subject to the condition that the Company file a detailed IRP-to-CEIP Workplan in this Docket by August 15, 2021.
- 28 (10) After reviewing PacifiCorp's Motion and giving due consideration to all relevant matters and for good cause shown, the Commission finds that the continuance will not prejudice any party or the Commission and that it should be granted subject to the condition that the Company file a detailed IRP-to-CEIP Workplan in this docket by August 15, 2021.

**DOCKET UE-210223
ORDER 01**

PAGE 7

ORDER

THE COMMISSION ORDERS:

- 29 (1) PacifiCorp d/b/a Pacific Power & Light Company’s Petition for exemption and Motion for Continuance are granted subject to the condition that the Company file a detailed IRP-to-CEIP Workplan in this Docket by August 15, 2021.
- (2) Notwithstanding the Commission’s grant of Pacific Power & Light Company’s Petition for exemption and Motion for Continuance, nothing herein precludes the Commission from pursuing penalties dating to the original deadlines set forth in General Order 601 and WAC 480-100-640(1), if the company fails to comply with the deadlines set forth in this Order for its draft or final Clean Energy Implementation Plan.¹⁶
- 30 (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 July 9, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

¹⁶ In its Petition and Motion, the Company sought to extend the deadline by which it must file its draft and final plans. In dissent, Commissioner Balasbas asserts that by granting the petition, the Commission somehow “forecloses the ability to impose retroactive penalties.” In fact, the Commission grants the Company’s petition and motion, but does so subject to condition. The Commission is confident in its legal authority to impose penalties against the Company in the event the Company does not comply with the new deadlines it has requested.

**DOCKET UE-210223
ORDER 01**

PAGE 8

Concurring and Dissenting Opinion of Commissioner Balasbas

- 31 I agree with my colleagues' action to approve the Company's Petition and Motion to extend the deadline for filing its CEIP to January 1, 2022. However, I respectfully and strongly disagree with my colleagues' insertion of paragraph 18 that allows for retroactive penalties against the Company if it fails to comply with the new deadlines established in today's Order.
- 32 The threat of retroactive penalties is an unnecessary and unhelpful element added to an already challenging process. I share my colleagues' concerns and am also frustrated with the Company's continued need to extend filing deadlines for critical information related to its IRP and CEIP. That said, we do need to remain flexible and Staff's original recommendation and condition of filing a Modeling Workplan by August 15, 2021, creates a more than sufficient incentive to hold the Company accountable and ensure the CEIP filing is as complete as possible.
- 33 If my colleagues wanted to send a clear message to the Company, the "leverage" was to simply deny the petition and motion for extension. While that is not an ideal outcome and creates its own issues, by taking that action, imposing penalties for failure to file by the deadlines established in WAC 480-600-140(1) would be appropriate. However, by granting the petition and motion, the Commission has waived its own rules and changed the deadlines to the ones established in today's Order. This action forecloses the ability to impose retroactive penalties.
- 34 Given all the work this Commission has done and continues to do on Clean Energy Transformation Act implementation, we do not need to establish a precedent of threatening retroactive penalties for failure to comply with Commission actions.

JAY M. BALASBAS, Commissioner