

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

STAFF'S MOTION TO  
WITHDRAW COMPLAINT

**I. INTRODUCTION**

1 Commission Staff, PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp  
or Company), NW Energy Coalition and Sierra Club (Settling Parties) have reached a  
proposed settlement in this case. Staff brings this motion to withdraw Staff's Complaint  
on the condition that the attached settlement stipulation is approved. The Settling Parties  
support this motion, AWEC does not oppose the motion, and Public Counsel opposes the  
motion.

**II. RELIEF REQUESTED**

2 The Settling Parties respectfully request that the Commission approve the  
settlement stipulation filed with this motion and grant the motion to withdraw.<sup>1</sup>

**III. BACKGROUND**

3 The facts relevant to this motion are straightforward. On June 6, 2022, the  
Washington Utilities and Transportation Commission (Commission), through its staff

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<sup>1</sup> It is unclear whether Commission approval is required for a "settlement or other agreement" under WAC 480-07-380(3)(b). However, given that the terms of this settlement involve making a filing in a separate docket, the Settling Parties believe it is reasonable for the Commission to approve the settlement stipulation.

(Staff), issued a Complaint and Notice of Prehearing Conference in Docket UE-220376 (Complaint). The Complaint alleges that PacifiCorp violated Commission Order 01 in Docket UE-210829, Revised Code of Washington (RCW) 19.280.030(3)(a)(ii), RCW 19.280.030(3)(a)(iii), Washington Administrative Code (WAC) 480-100-640(7), and WAC 480-100-660(4) by failing to incorporate the social cost of greenhouse gases (SCGHG) in the preferred portfolio of its Clean Energy Implementation Plan (CEIP). The Complaint requests that the Commission find PacifiCorp in violation of statute, Commission rule, and Commission order and assess a penalty of \$1,000 per day for each of the five violations alleged.

4           On November 14, 2022, Staff notified Judge O’Connell that the parties had reached a multiparty settlement in principle, requested the Commission suspend the current procedural schedule, and set a December 1, 2022 deadline for filing the settlement and motion to withdraw the Complaint. On November 17, 2022, the Commission suspended the procedural schedule and set the deadlines for this motion and a response, if any, to be considered on a paper record. The Commission subsequently amended the deadline for response, if any, on the request of Public Counsel.

#### **IV. ISSUES PRESENTED**

5           Should the Commission approve the settlement stipulation and grant Staff’s motion to withdraw?

#### **V. ARGUMENT**

6           The settlement stipulation’s main condition requires PacifiCorp to refile its 2021 CEIP with the P02-SCGHG portfolio as the basis for the CEIP preferred portfolio in

Docket UE-210829.<sup>2</sup> The settlement requires a detailed explanation (including a step-by-step roadmap) of how the SCGHG cost adder was included in the preferred portfolio as part of that refiling, as well as supporting workpapers. PacifiCorp will also provide a detailed explanation of how the P02-SCGHG portfolio was incorporated into the P02-MM-CETA portfolio. There are other conditions that specify when the refiling will occur and steps that will be taken prior to the refiling, clarifies that this settlement is not precedential, and parties are free to advocate for other methodologies in future cases. Once the CEIP is refiled in Docket UE- 210829, the Settling Parties are hopeful that they will be able to proceed with resolving that docket in a timely fashion. These conditions fully satisfy Staff's recommendation to refile the CEIP outlined in the testimony of Andrew Rector filed on October 21, 2022.<sup>3</sup> The settlement does not include any penalty assessment or admission to any violation of contested fact or law, as discussed further below.

7           The parties in this docket engaged in extensive settlement negotiations. There were disagreements on the merits of the Complaint and the best methods of incorporating the SCGHG cost adder. However, all parties were interested in resolving this dispute quickly because the issues raised by the Complaint prevent progress in the CEIP docket until they were resolved. As the Commission is aware, the CEIP has been unfortunately delayed for a variety of reasons, including the need to resolve the issues in this docket prior to proceeding. In the spirit of compromise and to avoid further unnecessary delay in reviewing the CEIP, the Settling Parties reached this agreement. While disagreements

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<sup>2</sup> The P02-SCGHG Portfolio is the same portfolio that is identified as P02-SCGHG in PacifiCorp's Final CEIP filed December 30, 2021 in Docket UE-210829.

<sup>3</sup> Rector, Exh. ASR 1-T at 4:13-14.

remain regarding the best method of incorporating the SCGHG cost adder, the Settling Parties recognize that in the CEIP/IRP rulemaking adoption order the Commission provided IOUs flexibility in the methods it chose.<sup>4</sup> The settling parties agree that the P02-SCGHG portfolio complies with the minimum requirements in statute and rule, and the requirements of Order 01.

8           As noted above, the settlement agreement does not include any penalties or admission to any violations of contested fact or law. While the Settling Parties had disagreements on the merits of the Complaint and whether penalties would be appropriate, the settlement is a compromise that balances the cost and risk of fully litigating the complaint with the potential benefits. The settling parties believe this outcome is in the public interest considering that the refiling required by the settlement results in a PacifiCorp CEIP that the Settling Parties agree complies with the requirements of statute, commission rule, and order, and avoids unnecessary delays in the CEIP docket. Once the parties established that an agreement was possible on the issue of refiling, the Settling Parties each weighed the value of continuing the proceeding to receive a decision regarding a determination on the alleged violations and penalties. Given the uncertain outcome of fully litigating the case and the delay it would cause, the Settling Parties believe this settlement is a superior alternative and is therefore in the public interest. For Staff specifically, the goal of administrative penalties is to incent a regulated entity into compliance. Here, the settlement results in a PacifiCorp CEIP that the Settling Parties agree complies with the requirements of statute, commission rule, and

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<sup>4</sup> See *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, p. 17, ¶ 37- p. 18, ¶ 39 (Dec. 28, 2020).

order, and the value of continuing the litigation in order to impose penalties was outweighed by the need to make progress in the CEIP docket, and the uncertain outcome of litigation.

9 Under WAC 480-07-380(3)(b), the Commission will grant a motion to withdraw a formal complaint if it is in the public interest.<sup>5</sup> Therefore, if the Commission were to grant this motion, it would not represent a decision on the merits of the Complaint, and would not indicate whether the Commission would have found penalties appropriate had the case been fully litigated.

10 For the reasons discussed, the Commission should approve the settlement and grant Staff's motion to withdraw.

DATED December 1, 2022.

Respectfully submitted,

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<sup>5</sup> The Settling Parties do not believe that, under WAC 480-07-380(3)(b), a "settlement or other agreement" related to a motion to withdraw is subject to the requirements outlined under WAC 480-07-740. If the Commission disagrees, the Settling Parties believe that this proceeding is a less complex matter under WAC 480-07-740(2)(b) as the issue involves a single modeling revision in the Company's CEIP, and therefore prefiled testimony supporting the settlement is not necessary. See WAC 480-07-740(3)(a). While the other settling parties do not necessarily agree with the statements and conclusions in Staff's testimony, the Settling Parties believe the testimony represents sufficient supporting documentation in the record to approve the settlement and grant the motion.