

**BEFORE THE WASHINGTON  
UTILITIES & TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Complainant,

v.

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

Respondent.

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DOCKET UE-220376

**TESTIMONY OF STEPHANIE K. CHASE IN OPPOSITION TO THE  
SETTLEMENT AGREEMENT TO WITHDRAW STAFF'S COMPLAINT  
ON BEHALF OF THE  
WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL  
PUBLIC COUNSEL UNIT**

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**Exhibit SKC-1T**

December 23, 2022

1 **Q. Please state your name and business address.**

2 A. My name is Stephanie K. Chase and my business address is 800 Fifth Avenue, Suite  
3 2000, Seattle, Washington 98104.

4 **Q. By whom are you employed and in what capacity?**

5 A. I am a Regulatory Analyst with the Public Counsel Unit of the Washington State  
6 Attorney General's Office (Public Counsel). Public Counsel is a statutory party to  
7 proceedings before the Washington Utilities and Transportation Commission (UTC or  
8 the Commission) under RCW 80.01.100, RCW 80.04.510, and RCW 81.04.500.

9 **Q. On whose behalf are you testifying?**

10 A. I am testifying on behalf of Public Counsel.

11 **Q. Please describe your professional qualifications.**

12 A. I have a J.D. from the University of Wisconsin Law School and a Master of Public  
13 Affairs degree from the La Follette School of Public Affairs at the University of  
14 Wisconsin-Madison, with a concentration in energy and environmental policy. I also  
15 have a B.S. in Political Science from South Dakota State University in Brookings,  
16 South Dakota.

17 Prior to joining Public Counsel, I worked as an associate attorney at the  
18 Environmental Law & Policy Center (ELPC) in their Madison, Wisconsin office. As  
19 an associate attorney, I worked on a variety of legal and policy matters related to  
20 energy and environmental issues in Wisconsin, South Dakota, and North Dakota.

21 Since joining Public Counsel in January 2020, I have worked on a variety of  
22 utility and transportation matters, including the 2020 Puget Sound Energy (PSE) water  
23 heater rental service sale case (Docket UG-200112), the Cascade Natural Gas general

1 rate case (Docket UG-200568), PSE's Power Cost Only Rate Case (Docket  
2 UE-200980), the CenturyLink 911 outage complaint case (Docket UT-181051), the  
3 Super Friends Moving Company complaint case (Docket TV-190835), the Clutter, Inc.  
4 complaint case (Docket TV-200432), the Washington Water Service Corporation  
5 general rate case (Docket UW-210560), the 2022 PSE general rate case (Dockets  
6 UE-220066 and UG-220067), and several smaller water rate cases and transportation  
7 company complaint cases.

8 I also have worked on several rulemakings related to the Clean Energy  
9 Transformation Act (Dockets UE-190698, UE-190837, UE-191023, and UE-210183)  
10 and the advanced metering infrastructure rulemaking (Docket U-180525). I am also  
11 working on the household goods movers docket revising Tariff 15-C (Dockets  
12 TV-210812 and TV-210535 (*Consolidated*)) and the solid waste rulemaking  
13 (TG-220140).

14 I represent Public Counsel on PSE's Conservation Resource Advisory Group,  
15 PSE's Integrated Resource Plan (IRP) technical advisory group, and PacifiCorp's  
16 Demand Side Management advisory group, IRP group, low-income advisory group,  
17 and equity advisory group. I also represent Public Counsel on the Commission's  
18 electric vehicle and transportation electrification stakeholder group.

19 Additionally, I completed the Public Utilities Reports Principles of Public  
20 Utilities Operations and Management Guide Course in May 2020, the Michigan State  
21 University Institute for Public Utilities Ratemaking Training in September 2020, and  
22 the National Association of Regulatory Utility Commissioners Rate School in May  
23 2022.

1       **Q.     Please describe the purpose of your testimony.**

2       A.     My testimony responds to the Settlement Agreement to Withdraw Staff’s Complaint  
3             (Settlement Agreement) and Staff’s Motion to Withdraw Complaint (Motion to  
4             Withdraw), filed on December 1, 2022.<sup>1</sup> My testimony also discusses Staff’s  
5             complaint<sup>2</sup> and the testimony of Andrew Rector,<sup>3</sup> filed on behalf of Staff, and presents  
6             Public Counsel’s recommendations in opposition to the proposed Settlement  
7             Agreement and Motion to Withdraw.

8       **Q.     What terms does the Settlement Agreement contain?**

9       A.     The Settlement Agreement describes a number of terms that the settling parties<sup>4</sup>  
10            agreed to. These terms include that Staff will file a motion to withdraw their complaint  
11            and that PacifiCorp will file a revised Clean Energy Implementation Plan (CEIP)  
12            within 30 days of a Commission decision granting Staff’s motion to withdraw the  
13            complaint.<sup>5</sup> The Settlement Agreement also describes some specific requirements for  
14            PacifiCorp’s revisions to the CEIP, including (1) that they will use the P02-SCGHG  
15            portfolio as the basis for the CEIP preferred portfolio and development of the  
16            alternative lowest reasonable cost portfolio;<sup>6</sup> (2) that they will include a “thorough and  
17            detailed explanation” in its filing as to how the “Revised CEIP preferred portfolio

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<sup>1</sup> Settlement Agreement to Withdraw Staff’s Complaint and Staff’s Motion to Withdraw Complaint (filed Dec. 1, 2022) (hereinafter “Settlement Agreement” and “Motion to Withdraw”, respectively).

<sup>2</sup> Complaint and Notice of Prehearing Conference (issued June 6, 2022) (hereinafter “Complaint”).

<sup>3</sup> Testimony of Andrew Rector, Exh. ASR-1T (filed Oct. 21, 2022).

<sup>4</sup> The parties agreeing to the Settlement Agreement are PacifiCorp, UTC Staff, Sierra Club, and the Northwest Energy Coalition (NVEC). The Association of Western Energy Consumers (AWEC) participated in the proceedings, but it is Public Counsel’s understanding that AWEC will take no position on the Settlement. *See* Settlement Agreement, ¶ 1.

<sup>5</sup> Settlement Agreement, ¶¶ 3–4.

<sup>6</sup> Settlement Agreement, ¶ 5.

1 applied a SCGHG cost adder to each Washington-allocated resource in the preferred  
2 portfolio” and provide workpapers and other details;<sup>7</sup> and (3) that PacifiCorp will  
3 provide a draft of the Revised CEIP to the parties seven business days before the  
4 deadline to file the revisions with the Commission, with the opportunity for parties to  
5 provide feedback to the Company.<sup>8</sup>

6 **Q. Please describe Staff’s Motion to Withdraw.**

7 A. Along with the Settlement Agreement, Staff filed a motion to withdraw its complaint  
8 against PacifiCorp. Staff and the settling parties believe that refiling the CEIP as  
9 required by the Settlement Agreement will comply with “the requirements of statute,  
10 commission rule, and order, and avoids unnecessary delays in the CEIP docket.”<sup>9</sup> Staff  
11 states that the “value of continuing the litigation in order to impose penalties was  
12 outweighed by the need to make progress in the CEIP docket, and the uncertain  
13 outcome of litigation.”<sup>10</sup> Thus, Staff argues that it is in the public interest to withdraw  
14 the Complaint.<sup>11</sup>

15 **Q. What are the requirements for approval of a settlement agreement?**

16 A. WAC 480-07-740 specifies how the Commission will review settlements and  
17 determine if they meet the requirements of the applicable statutes and are in the public  
18 interest. In particular, the WAC requires settling parties to include “supporting  
19 documentation sufficient to demonstrate that the settlement is consistent with the law

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<sup>7</sup> Settlement Agreement ¶ 6.

<sup>8</sup> Settlement Agreement ¶ 8.

<sup>9</sup> Motion to Withdraw, ¶ 8.

<sup>10</sup> Motion to Withdraw, ¶ 8.

<sup>11</sup> Motion to Withdraw, ¶¶ 8–9.

1 and the public interest.”<sup>12</sup> Supporting documentation “must describe the disputed  
2 issue(s) and proposed resolution and must include or reference sufficient evidence to  
3 support commission approval and adoption of the settlement agreement under  
4 applicable law consistent with the public interest.”<sup>13</sup>

5 **Q. When may a complaint be withdrawn?**

6 A. The Commission’s procedural rules provide for the withdrawal of a complaint that  
7 serves as the basis for an adjudicative proceeding.<sup>14</sup> A party may withdraw the  
8 complaint only upon permission granted by the Commission in response to a written  
9 motion, which must include any settlement or other agreement pursuant to which the  
10 party is seeking withdrawal.<sup>15</sup> The Commission will grant such a motion when the  
11 requested withdrawal is in the public interest.<sup>16</sup>

12 **Q. Why does Public Counsel oppose the Settlement Agreement and Motion to**  
13 **Withdraw the Complaint?**

14 A. Public Counsel opposes the Settlement Agreement and Motion to Withdraw the  
15 Complaint because neither document is based on sufficient support in the record as  
16 required by WAC 480-07-740, WAC 480-07-750, WAC 480-07-380(3),  
17 RCW 34.05.461(3), and RCW 34.05.461(4).

18 The Settlement Agreement does not reference joint testimony, any workpapers,  
19 or other evidence as support that would demonstrate how the settlement meets the  
20 requirements in WAC 480-07-740 and WAC 480-07-750. The Settlement Agreement

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<sup>12</sup> WAC 480-07-740(3).

<sup>13</sup> WAC 480-07-740(3)(a).

<sup>14</sup> WAC 480-07-380(3).

<sup>15</sup> WAC 480-07-380(3)(a).

<sup>16</sup> WAC 480-07-380(3)(b).

1 appears to set out instructions for a future filing that PacifiCorp will provide to  
2 demonstrate that the CEIP will comply with the law on a future unspecified date. In  
3 the Motion to Withdraw, the Commission is asked to trust that PacifiCorp will provide  
4 the described but unspecified content, which unlike the current CEIP on record, will  
5 comply with the Commission order, Commission regulations, and CETA. PacifiCorp  
6 agrees to correct the violations cited in the Complaint only after the Commission  
7 approves withdrawal of the Complaint that sets forth those violations. The timing of  
8 the requested favorable Commission order and the CEIP revisions that would justify it  
9 are backwards.

10 The Motion to Withdraw is premised on the Settlement Agreement, which  
11 lacks sufficient support. Thus, the Motion is also unsupported. WAC\_480-07-380(3)  
12 states that the Commission will grant a withdrawal motion when the requested  
13 withdrawal is in the public interest. It is Public Counsel's view that it is in the public  
14 interest that PacifiCorp comply with the applicable law on inclusion of social cost of  
15 greenhouse gases (SCGHG) in CEIPs as required by CETA, Commission rule, and  
16 Commission order. Because the record shows that the daily violations cited in the  
17 Complaint continue to exist and are ongoing, and PacifiCorp has not demonstrated  
18 how it has complied with the law or how it has taken any action over almost a full year  
19 that would justify mitigation of the penalties as described in the Commission's  
20 Enforcement Policy, it is Public Counsel's view that the Commission should reject the  
21 Settlement Agreement, deny the Motion, and assess maximum penalties as described  
22 below on PacifiCorp.

1       **Q.     What does Staff’s Complaint allege?**

2       A.     In the Complaint, Staff alleges that PacifiCorp violated Washington statutes,  
3             regulations, and Commission order when filing their CEIP, which did not properly  
4             incorporate the social cost of greenhouse gas (SCGHG). Specifically, Staff asserts five  
5             violations. First, the Company “violated Order 01 of Docket UE-210829 by filing the  
6             Final CEIP with a CEIP preferred portfolio that did not incorporate” SCGHG as  
7             required by that order.<sup>17</sup> Second, the Company “violated RCW 19.280.030(3)(a)(iii)  
8             by not including the SCGHG as a cost adder when ‘evaluating and selecting  
9             intermediate and long-term resource options.’”<sup>18</sup> Third, the Company “violated RCW  
10            19.280.030(3)(a)(ii) by not including the SCGHGs as a cost adder when ‘developing  
11            integrated resource plans and clean energy action plans.’”<sup>19</sup> The fourth and fifth  
12            violations result from the Company’s failure to follow WAC 480-100-640(7) and  
13            WAC 480-100-660(4) “because the projected incremental cost calculation in the Final  
14            CEIP did not include the SCGHGs in the CEIP preferred portfolio ...”<sup>20</sup>

15       **Q.     What relief does the Complaint request?**

16       A.     Staff requests that the Commission consider the maximum statutory penalty of \$1,000  
17             per violation per day for the five violations above since the date the Company filed its  
18             final CEIP on December 30, 2021.<sup>21</sup> At the time the Complaint was filed, Staff  
19             calculated the maximum penalty to equal \$730,000.<sup>22</sup> Staff witness Rector now

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<sup>17</sup> Complaint, ¶ 21.

<sup>18</sup> Complaint, ¶ 22.

<sup>19</sup> Complaint, ¶ 23.

<sup>20</sup> Complaint, ¶ 24.

<sup>21</sup> Complaint, ¶ 25.

<sup>22</sup> Complaint, ¶ 25.



1 calculates the maximum penalty as \$1.93 million, if the \$5,000 per day penalty  
2 accrues from December 30, 2021, until the date of hearing on January 19, 2023.<sup>23</sup> In  
3 addition, Staff requests that “the Commission order PacifiCorp to rerun its CEIP  
4 model using the SCGHG in accordance with the provisions noted” in the Complaint  
5 and submit a new preferred portfolio for the CEIP that complies “with Order 01,  
6 Commission rule, and statute.”<sup>24</sup>

7 **Q. What is Public Counsel’s understanding of the legal requirements for how the**  
8 **social cost of greenhouse gas is treated in a company’s Clean Energy**  
9 **Implementation Plan?**

10 A. The Clean Energy Transformation Act (CETA) established new requirements for  
11 electric utilities. Among other obligations, RCW 19.280.030(3)(a) provides that:

12 An electric utility must incorporate the social cost of greenhouse gas  
13 emissions as a cost adder when:

- 14 (i) Evaluating and selecting conservation policies, programs,  
15 and targets;  
16 (ii) Developing integrated resource plans and clean energy  
17 action plans; and  
18 (iii) Evaluating and selecting intermediate term and long-term  
19 resource options.

20 The Washington Administrative Codes (WACs) also require utilities to  
21 incorporate the social cost of greenhouse gas emissions as a cost adder as specified by  
22 RCW 19.280.030(3) in the IRP and clean energy action plan.<sup>25</sup> Both the IRP and clean  
23 energy action plan developed by an electric utility are plans that inform the  
24 development of the CEIP and must be consistent with the CEIP. Further, WAC

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<sup>23</sup> Rector, Exh. ASR-1T at 26:13–18.

<sup>24</sup> Complaint, ¶ 26.

<sup>25</sup> WAC 480-100-620(11)(j) and (12)(i).

1 480-100-605 defines “alternative lowest reasonable cost and reasonably available  
2 portfolio” and provides that the “alternative lowest reasonable cost and reasonably  
3 available portfolio must include the social cost of greenhouse gases in the resource  
4 acquisition decision in accordance with RCW 19.280.030(3)(a).”

5 In December 2020, the Commission issued a General Order, R-601, for  
6 Dockets UE-191023 and UE-190698 (consolidated), which addressed some of the  
7 rulemaking for CETA. The General Order addresses what RCW 19.280.030(3)(a)  
8 requires, stating:

9 While the phrase ‘selecting and evaluating’ in RCW 19.280.030(a)(i) and  
10 (iii) could be read to mean selection only within the IRP and not in actual  
11 investment decisions, RCW 19.280.030(a)(ii), which states that the  
12 SCGHG should be included when developing IRPs and CEIPs,  
13 contradicts that interpretation. Given that context, if subsections -  
14 .030(a)(i) and (iii) were in fact merely intended as planning requirements,  
15 not required for actual investing decisions, then subsection -.030(a)(ii) is  
16 redundant. We decline to so construe the statute.<sup>26</sup>

17 There are two additional relevant WAC sections in this case. First, WAC 480-100-640  
18 specifies what should be included in a CEIP. Subsection 7 states, “Each CEIP must  
19 include a projected incremental cost as outlined in WAC 480-100-660(4).”<sup>27</sup> WAC  
20 480-100-660(4) provides:

21 The utility must file projected incremental cost estimates in each CEIP  
22 using the methodology described in subsection (1) of this section and  
23 using projected weather-adjusted sales revenue in the calculation in  
24 subsection (2) of this section to estimate the average annual threshold  
25 amount for the implementation period. The utility must support the  
26 projections with workpapers, models, and associated calculations, and  
27 must:

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<sup>26</sup> *In re Adopting Rules Relating to Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act*, Dockets UE-191023 & UE-190698 (*consol.*), General Order R-601, ¶ 131 (Dec. 28, 2020) (hereinafter “CETA Rulemaking Order”).

<sup>27</sup> WAC 480-100-640(7).

1 (a) Identify all investments and expenses that the utility plans to  
2 make during the period in order to comply with the requirements of  
3 RCW 19.405.040 and 19.405.050.

4 (b) Demonstrate that the investments and expenses identified in  
5 (a) of this subsection are directly attributable to actions necessary to  
6 comply with, or make progress towards, the requirements of  
7 RCW 19.405.040 and 19.405.050.

8 (c) Provide the expected cost of the utility's planned activities and  
9 the expected cost of the alternative lowest reasonable cost and reasonably  
10 available portfolio.<sup>28</sup>

11 In sum, both RCWs and WACs require that electric utilities like PacifiCorp  
12 include the social costs of greenhouse gas as a cost adder in the evaluation and  
13 selection of resources in both the CEIP preferred portfolio and alternative lowest  
14 reasonable cost portfolio.

15 **Q. What information exists in the record to support Staff's allegations in the**  
16 **Complaint?**

17 A. Public Counsel has reviewed a number of documents in the record, including the  
18 PacifiCorp's draft CEIP, Petition for Exemption of WAC 480-100-605, and final  
19 CEIP. We have also reviewed Staff's Complaint, the Testimony of Andrew Rector and  
20 associated exhibits, and the discovery requests in this case. In the view of Public  
21 Counsel, the evidence in the record supports Staff's allegations in the Complaint.

22 PacifiCorp filed both their draft CEIP and Petition for Exemption from  
23 WAC 480-100-605 on November 1, 2021. Both documents were premised on the use  
24 of the IRP preferred portfolio, P02-MM-CETA, as the CEIP preferred portfolio. In the  
25 draft CEIP, filed November 1, 2021, PacifiCorp states that its P02-MM portfolio was

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<sup>28</sup> WAC 480-100-660(4).

1 “not developed to use SCGHG ‘in the resource acquisition decision,’ which is why  
2 PacifiCorp has requested a waiver” of WAC 480-100-605.<sup>29</sup> In the Petition, the  
3 Company points to its IRP preferred portfolio, P02-MM-CETA and states that it “did  
4 not include an SCGHG dispatch adder ‘in the resource acquisition decision’ ...”<sup>30</sup> The  
5 Company notes, “If the rules were applied strictly as written, this would require  
6 PacifiCorp to compare a CETA Portfolio developed with a SCGHG (P02-MM-  
7 CETA), to an Alternative Portfolio developed with the SCGHG (P02-CETA).”<sup>31</sup>  
8 PacifiCorp used this portfolio as the basis for its resource selections, despite the  
9 statutory requirement that a SCGHG cost adder be incorporated in resource selection.

10 The Commission ruled against the Company’s Petition, specifically requiring  
11 PacifiCorp to “include in its final CEIP both an Alternative LRCP and a preferred  
12 portfolio that incorporates the SCGHG as required by WAC 480-100-605 and RCW  
13 19.280.030(3)(a).”<sup>32</sup>

14 Following the Commission’s order, the Company filed their final CEIP on  
15 December 30, 2021. The “draft CEIP incorporated the SCGHG in the preferred  
16 portfolio exactly how the Company eventually incorporated the adder in its final  
17 CEIP.”<sup>33</sup> As to how the SCGHG was incorporated, the document states: “The  
18 preferred portfolio of resources was evaluated with the SCGHG dispatch adder

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<sup>29</sup> PacifiCorp Draft Clean Energy Implementation Plan at 66, *In re: PacifiCorp d/b/a Pacific Power & Light Co. Clean Energy Implementation Plan*, Docket UE-210829 (filed Nov. 1, 2021).

<sup>30</sup> PacifiCorp Petition for Exemption, ¶ 6, Docket UE-210829 (filed Nov. 1, 2021).

<sup>31</sup> PacifiCorp Petition for Exemption, ¶ 7.

<sup>32</sup> *In re: the Petition of PacifiCorp d/b/a Pacific Power & Light Co. Seeking Exemption from Provisions of WAC 480-100-605*, Docket 210829, Order 01, ¶ 11 (Dec. 13, 2021).

<sup>33</sup> Rector, Exh. ASR-11 at 17.

1 included as a factor in energy efficiency selections and SCGHG was considered in the  
2 totality of portfolios examined throughout the IRP process.”<sup>34</sup> What it means for  
3 PacifiCorp to consider SCGHG in the “totality of portfolios” is unclear. PacifiCorp  
4 could have provided additional information or supplemented their CEIP, but has not  
5 done so in the record.

6 **Q. Has PacifiCorp made a clear showing in the record that the Company has**  
7 **complied with the applicable statutes, Commission regulations, and Commission**  
8 **orders?**

9 A. No, they have not. Though the Company has demonstrated awareness of their ability  
10 to file additional information and corrections to their CEIP by filing an errata to their  
11 final CEIP related to the calculation of incremental cost,<sup>35</sup> PacifiCorp has not provided  
12 a clear explanation in the docket regarding how they incorporated SCGHG into their  
13 CEIP preferred portfolio, in compliance with the statute, Commission rules, and  
14 Commission order.

15 **Q. Has the Commission established criteria for enforcement actions and determining**  
16 **penalties?**

17 A. Yes. In its policy statement on enforcement policy, the Commission stated that it will  
18 consider the following factors in determining if an enforcement action is appropriate,  
19 and if so which action it should take:

20 (1) how serious or harmful the violation is to the public;

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<sup>34</sup> Final Clean Energy Implementation Plan at 93, Docket UE-210829 (filed Dec. 30, 2021).

<sup>35</sup> See Revised Errata to PacifiCorp's Final Clean Energy Implementation Plan, Docket UE-210829 (filed Apr. 19, 2022); Corrected Redline Errata to PacifiCorp's Final Clean Energy Implementation Plan, Docket UE-210829 (filed Apr. 27, 2022).

- 1 (2) whether the violation is intentional;
- 2 (3) whether the company self-reported the violation;
- 3 (4) whether the company was cooperative and responsive;
- 4 (5) whether the company promptly corrected the violations and remedied the
- 5 impacts;
- 6 (6) the number of violations;
- 7 (7) the number of customers affected;
- 8 (8) the likelihood of recurrence;
- 9 (9) the company's past performance regarding compliance, violations, and
- 10 penalties;
- 11 (10) the company's existing compliance program; and
- 12 (11) the size of the company.<sup>36</sup>

13 **Q. How does Public Counsel recommend applying the Commission's enforcement**  
14 **criteria in this case?**

15 A. Public Counsel believes that applying the Commission's enforcement criteria supports  
16 the imposition of the maximum statutory penalty in this case. Our analysis of each  
17 criteria is as follows:

- 18 (1) *How serious or harmful the violation is to the public:* Incorrectly accounting  
19 for SCGHG could result in different resource selections, leading to incorrect  
20 incremental cost calculations that are supposed to underlie the Commission's  
21 decision as to whether to approve a CEIP. Even if resource selections end up

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<sup>36</sup> *In re: the Enf't Pol'y of the Wash. Utils. & Transp. Comm'n*, Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission, ¶ 15 (Jan. 7, 2013) (hereinafter "Enforcement Policy").

1 being similar or the same after the correct inclusion of the SCGHG for resource  
2 selections in this CEIP, the same may not be the case for other CEIP periods.

3 In addition, following the process requirements of CETA is important to  
4 Washington's goals of addressing climate change and providing more equitable  
5 outcomes. If PacifiCorp is allowed to subvert the process requirement here,  
6 they or other utilities may do so again in future CEIP filings.

7 (2) *Whether the violation is intentional:* As they noted in their Petition for  
8 Exemption, PacifiCorp "did not include an SCGHG dispatch adder 'in the  
9 resource acquisition decision'..."<sup>37</sup>PacifiCorp could have changed their  
10 approach after the Commission denied their petition, but they did not.

11 (3) *Whether the company self-reported the violation:* PacifiCorp did not self-report  
12 the violations.

13 (4) *Whether the company was cooperative and responsive:* PacifiCorp has attended  
14 meetings with Staff and other stakeholders, but has not corrected its violations.

15 (5) *Whether the company promptly corrected the violations and remedied the*  
16 *impacts:* PacifiCorp has not corrected the violations. The Company could do so  
17 by filing a CEIP with using compliant portfolios that include the SCGHG cost  
18 adder for each resource, but it has not done so.

19 (6) *The number of violations:* There are five violations that are accumulating daily  
20 between December 30, 2021 and January 19, 2023, resulting in 1,930  
21 violations.

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<sup>37</sup> PacifiCorp Petition for Exemption, ¶ 6.

1 (7) *The number of customers affected:* PacifiCorp's violations affect all 137,000  
2 of its Washington customers.

3 (8) *The likelihood of recurrence:* Without penalties, PacifiCorp or other utilities  
4 could repeat the same or similar violations in future CEIPs.

5 (9) *The company's past performance regarding compliance violations and*  
6 *penalties:* Staff's testimony details PacifiCorp's repeated failures to meet  
7 regulatory deadlines for its 2021 IRP and CEIP. The Commission granted  
8 multiple extensions to allow the Company to comply with the legal  
9 requirements in the IRP and CEIP resource selection modeling. The Company  
10 did not ultimately meet those requirements for the CEIP.

11 (10) *The company's existing compliance program:* PacifiCorp does not have a  
12 compliance program related to its CEIP.

13 (11) *The size of the company:* PacifiCorp is a large, multi-state utility with  
14 significant resources to comply with the law.

15 **Q. Has the Commission established guidance on determining whether to mitigate or**  
16 **suspend a penalty?**

17 A. Yes. The Commission's Enforcement Policy lists the following factors the  
18 Commission will consider in determining whether penalty mitigation is appropriate:

- 19 (1) whether the company demonstrates that the facts considered by the  
20 commission underlying the assessment were incorrect or do not support the  
21 penalty assessed;



1 (2) whether the company demonstrates that mitigating information or factors exist  
2 that the Commission may not have considered in setting the assessed penalty  
3 amount; and

4 (3) whether the company explains other circumstances that convince the  
5 Commission that a lesser penalty will be equally or more effective in ensuring  
6 compliance by the company with applicable statutory and regulatory  
7 requirements.<sup>38</sup>

8 Additionally, the Commission's Enforcement Policy lists the following factors  
9 it will consider in determining whether to suspend a portion of a penalty:

10 (1) whether this is a first-time penalty for this or a similar violation;

11 (2) whether the company has taken specific actions to remedy the violations and  
12 avoid the same or similar violations in the future. Examples include purchasing  
13 new technology, making system changes, or training company personnel;

14 (3) whether the company agrees to a specific compliance plan that will guarantee  
15 future compliance in exchange for suspended penalties;

16 (4) whether Staff and the company have agreed that Staff will conduct a follow-up  
17 investigation at the end of the suspension period and that if a repeat violation is  
18 found the suspended penalties are re-imposed; and

19 (5) whether the company can demonstrate other circumstances that convince the  
20 commission to suspend the penalties.<sup>39</sup>

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<sup>38</sup> Enforcement Policy, ¶ 19.

<sup>39</sup> Enforcement Policy, ¶ 20.

1 **Q. Has PacifiCorp provided anything in the record to support mitigation or**  
2 **suspension of penalties consistent with the Commission’s guidance in the UTC**  
3 **Enforcement Policy?**

4 A. No, it has not. As I discussed earlier in my testimony, PacifiCorp filed an errata to  
5 their final CEIP related to the calculation of incremental cost, which indicates  
6 PacifiCorp is aware that it may file additional clarifying information or corrections to  
7 its CEIP.<sup>40</sup> However, since filing its final CEIP on December 30, 2021, PacifiCorp has  
8 not provided anything that clarifies how it has complied with the law regarding  
9 incorporation of SCGHG into their CEIP preferred portfolio.

10 **Q. Does the Staff’s Motion to Withdraw the Complaint or the Settlement Agreement**  
11 **reference any additional testimony or documentation as support?**

12 A. No. The Settling Parties explain in footnote five of their Motion to Withdraw that they  
13 do not believe that their settlement is subject to WAC 480-07-740, which sets out the  
14 requirements for supporting documentation of settlement agreements.<sup>41</sup> Instead, Staff  
15 states in the Motion that “[w]hile the other settling parties do not necessarily agree  
16 with the statements and conclusion” in Staff’s testimony supporting the Complaint,  
17 “the Settling Parties believe the testimony represents sufficient supporting  
18 documentation in the record to approve the settlement and grant the motion.”<sup>42</sup> The  
19 Settling parties also note in their Settlement in paragraph 11, that “[c]onduct,

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<sup>40</sup> Corrected Redline Errata to PacifiCorp's Final Clean Energy Implementation Plan, Docket UE-210829 (filed Apr. 27, 2022).

<sup>41</sup> Motion to Withdraw, ¶ 9, and at 5 n.5.

<sup>42</sup> Motion to Withdraw, ¶ 9, and at 5 n.5.

1 statements, and documents disclosed during negotiations of the Agreement shall not be  
2 admissible as evidence in this or any other proceeding.”<sup>43</sup> From these statements, it  
3 appears that the only thing the Settling Parties are referencing as support for the  
4 Settlement Agreement and Motion to Withdraw the Complaint is Staff’s testimony  
5 describing why PacifiCorp is in violation of Washington statute, Commission  
6 regulations, and Commission order.

7 **Q. Please summarize Public Counsel’s position in this case.**

8 A. Public Counsel believes that the maximum statutory penalty is appropriate in this case  
9 because of PacifiCorp’s actions, including the statements made in their Petition for  
10 Exemption from WAC 480-100-605 and failure to take corrective action over the past  
11 12 months to mitigate the penalties associated with the violations alleged in the  
12 Complaint. Public Counsel believes that the Settlement Agreement merely sets forth a  
13 plan for PacifiCorp to comply with the law, and even acknowledges that PacifiCorp  
14 remains in violation of the CETA requirements to include SCGHG in CEIPs. For this  
15 reason, Public Counsel believes that the Settlement Agreement is insufficiently  
16 supported, does not comply with the law, and is not in the public interest as required  
17 by WAC 480-07-740. Further, because the Settlement Agreement does not comply  
18 with the law and is contrary to public interest, the Motion to Withdraw referencing the  
19 Settlement Agreement as support also is contrary to public interest and must be denied  
20 consistent with WAC 480-07-380.

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<sup>43</sup> Settlement Agreement, ¶ 11.

1       **Q.    Does this conclude your testimony?**

2       A.    Yes, it does.