

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

|  |  |
|--|--|
| <p>WASHINGTON UTILITIES AND<br/>TRANSPORTATION COMMISSION</p> <p style="text-align: center;">Complainant,</p> <p>v.</p> <p>PACIFICORP, d/b/a PACIFIC POWER &amp;<br/>LIGHT COMPANY,</p> <p style="text-align: center;">Respondent.</p> | <p>DOCKET UE-220376</p> <p>COMPLAINT</p> <p>and</p> <p>NOTICE OF PREHEARING<br/>CONFERENCE<br/>(Set for June 30, 2022, at 1:30 p.m.)</p> |
|--|--|

1 The Washington Utilities and Transportation Commission (Commission) on its own motion, and through its staff (Staff), alleges as follows:

**I. PARTIES**

2 The Commission is an agency of the state of Washington authorized by statute to regulate the rates, services, facilities, and practices of public service companies, including electric companies.

3 PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp or Company) is a corporation operating as an electric company in the state of Washington.

**II. BACKGROUND**

4 On May 7, 2019, Governor Jay Inslee signed into law E2SSB 5116,<sup>1</sup> also known as the Clean Energy Transformation Act (CETA). Contained within CETA was a provision codified in RCW 19.280.030(3)(a), which reads in part: “An electric utility must incorporate the social cost of greenhouse gas emissions [SCGHG] as a cost adder when:…[e]valuating and selecting intermediate term and long-term resource options.”

5 On December 28, 2020, the Commission issued General Order R-601 in Dockets UE-191023 and UE-190698 (consolidated), which adopted rules that implement RCW Chapter 19.405 and revisions to RCW Chapters 19.280 and 80.28. General Order R-601

---

<sup>1</sup> Laws of 2019, Chapter 288.

addresses how the SCGHG should be included in an electric utility's Clean Energy Implementation Plan (CEIP). The General Order states in part:

“While the phrase ‘selecting and evaluating’ in RCW 19.280.030(a)(i) and (iii) could be read to mean selection only within the [integrated resource plan] 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.”<sup>2</sup>

- 6 PacifiCorp filed its draft CEIP on November 1, 2021, in Docket UE-210829. In informal comments emailed to the Company on December 10, 2021, Staff noted that the draft CEIP “was not developed to use the SCGHGs in the resource acquisition decision.” The informal comments also noted that the Company had filed a petition in Docket UE-210829 asking the Commission to modify its rules in WAC 480-100-605.

#### **PacifiCorp’s Petition for Exemption**

- 7 On November 1, 2021, the Company filed a petition for exemption from Commission rule. The petition sought an exemption from the definition of “Alternative lowest reasonable cost and reasonably available portfolio” under WAC 480-100-605. The Company explained the reasons it sought exemption as follows:

“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

---

<sup>2</sup> *In re Adopting Rules Relating to Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act*, Dockets UE-191023 & UE-190698 (Consolidated), General Order R-601, p. 47, ¶ 131 (CETA Rulemaking Order) (Dec. 28, 2020). Note that correct citation of the subsection referenced is RCW 19.280.030(3)(a)(i)-(iii), and the phrase the subsections use is “evaluating and selecting.”

dispatch adder ‘in the resource acquisition decision’ because no state that PacifiCorp serves requires SCGHG to be used in this specific way.”<sup>3</sup>

- 8 PacifiCorp argued that this would cause a mismatch in the incremental cost calculation’s comparison between the preferred portfolio and the Alternative Lowest Reasonable Cost Portfolio (Alternative LRCP):

“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).”<sup>4</sup>

- 9 In short, the Company requested permission to use an Alternative LRCP without including the SCGHGs because it was now proposing to use its IRP preferred portfolio as its CEIP preferred portfolio, and the IRP portfolio did not include the SCGHGs as required by RCW 19.280.030(3)(a).

### **Commission Staff’s Response to PacifiCorp’s Petition for Exemption**

- 10 Commission Staff filed a response to PacifiCorp’s petition for exemption on December 6, 2021, opposing the petition.<sup>5</sup> Staff argued that the request for exemption was contrary to the Commission’s interpretation of statute in the IRP/CEIP rulemaking adoption order.<sup>6</sup> Staff also stated that the mismatch the Company identified in its petition was due to the fact that the IRP’s preferred portfolio, which PacifiCorp was now proposing to use as the CEIP’s preferred portfolio, did not incorporate the SCGHGs as required by rule and statute.<sup>7</sup> Staff therefore requested that the Commission’s order denying the petition specifically direct the Company that “both the Company’s Alternative LRCP and the CEIP preferred portfolio include the SCGHG”<sup>8</sup> in the Final CEIP.

### **The Commission’s Order Denying the Petition**

---

<sup>3</sup> *PacifiCorp’s Petition for Exemption of WAC 480-100-605*, Docket UE-210829, p. 3, ¶ 6 (Petition) (Nov. 1, 2021). In PacifiCorp’s naming conventions, “MM” means medium carbon price, medium natural gas price.

<sup>4</sup> Petition at 3, ¶ 7.

<sup>5</sup> *Response to PacifiCorp’s Petition for Exemption on Behalf of Commission Staff*, Docket UE-210829, (Response) (Dec. 6, 2021).

<sup>6</sup> *Id.* at 5, ¶ 8, *citing* CETA Rulemaking Order at 17, ¶ 37; 46, ¶ 128- 48, ¶ 132.

<sup>7</sup> *Id.* at 6, ¶ 9.

<sup>8</sup> *Id.* at 9, ¶ 15.

11 On December 13, 2021, the Commission issued an order denying the petition. In the Order, the Commission agreed with Staff that granting PacifiCorp’s request would require changing the Commission’s interpretation of statute found in the adoption order.<sup>9</sup> The Commission stated the following in paragraph 11 of Order 01:

“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 must use these portfolios in its calculation of projected incremental cost, as required by WAC 480-100-640(7).”<sup>10</sup>

12 The order required PacifiCorp to “incorporate the SCGHG as outlined in paragraph 11 above.”<sup>11</sup>

### **PacifiCorp’s Final CEIP**

13 PacifiCorp filed its final CEIP on December 30, 2021. It is clear from the final CEIP that the Company used the same portfolio that it deemed its lowest reasonable cost portfolio in the IRP (*i.e.*, the IRP preferred portfolio) as the basis for the CEIP preferred portfolio. This is plainly shown when the Company states: “Interim targets for this CEIP are based on PacifiCorp’s IRP preferred portfolio, a least-cost, least-risk portfolio of resources optimized to meet all system-wide requirements, including CETA objectives.”<sup>12</sup> As mentioned above, this IRP preferred portfolio is the P02-MM-CETA portfolio, where the “MM” signifies a medium natural gas price, medium carbon price scenario. The Company thus establishes early in its CEIP that it has chosen to use its IRP preferred portfolio – which it admitted in its petition did not include the SCGHG “in the resource acquisition decision” – as the basis for the CEIP.<sup>13</sup>

---

<sup>9</sup> Docket UE-210829, Order 01, p. 3, ¶ 10, but see *Id.* at 6 (Commissioner Balasbas dissenting)

<sup>10</sup> *Id.* at 3-4, ¶ 11.

<sup>11</sup> *Id.* at 4, ¶ 18.

<sup>12</sup> Docket UE-210829, PacifiCorp Clean Energy Implementation Plan, p. 9 (PacifiCorp Final CEIP) (filed Dec. 30, 2021).

<sup>13</sup> Petition at 3, ¶ 6.

14 Chapter four of the CEIP, which details PacifiCorp’s incremental cost calculation, drives this point home further. The Company plainly states on the first page of the chapter that it did not consider the SCGHG “in the resource acquisition decision”:

“The preferred portfolio of resources was evaluated *with the SCGHG dispatch adder included as a factor in energy efficiency selections...* The CEIP Portfolio is therefore synonymous with the preferred portfolio as it represents the least cost path to achieving CETA targets of all available portfolios, *including those developed assuming an SCGHG dispatch adder...*”<sup>14</sup>

This is the plainest language that Staff can find proving that the Company did not utilize a “preferred portfolio that incorporates the SCGHG as required by WAC 480-100-605 and RCW 19.280.030(3)(a)”<sup>15</sup> as the basis for its incremental cost calculation.

15 PacifiCorp claims in its final CEIP that its Alternative LRCP “includes the SCGHG ‘in the resource acquisition decision’” as required by WAC 480-100-605.<sup>16</sup> Staff believes that the Alternative LRCP *may* meet the requirements in rule but finds it difficult to verify this with any certainty based on the information that the Company has supplied in its workpapers.

16 The Company filed a revised errata on April 19, 2022, and a corrected redline errata on April 27, 2022. The April 19, 2022, errata changed the projected incremental cost calculation. However, this is not due to a change related to incorporating the SCGHGs. Rather, it was made to correct a spreadsheet error in the original filing. As a result of the correction, the Company’s calculation of its 2022-2025 incremental costs changed from \$4.7 million annually to a net cost reduction of \$0.2 million annually.<sup>17</sup>

---

<sup>14</sup> PacifiCorp Final CEIP at 93-94. Emphasis added.

<sup>15</sup> Docket UE- 210829, Order 01, 3-4 ¶ 11 and 18.

<sup>16</sup> PacifiCorp Final CEIP at 95.

<sup>17</sup> Docket UE-210829, corrected errata to PacifiCorp Clean Energy Implementation Plan, p.95 (filed April 27, 2022).

### III. JURISDICTION

17 The Commission has jurisdiction over the subject matter of this complaint under  
RCW 80.01.040, RCW 80.01.060, RCW 80.04.110, chapter 19.405 RCW, and chapter 480-  
100 WAC.

### IV. APPLICABLE LAWS AND REGULATIONS

18 Under WAC 480-100-665(1), the Commission “may take enforcement action in response to  
a utility’s failure to comply with the provisions of chapter 19.405 RCW, this chapter of the  
commission’s rules, or a commission order implementing those requirements.” This includes  
bringing a complaint against the utility pursuant to RCW 80.04.380 and WAC 480-07-300.<sup>18</sup>

19 WAC 480-100-665(3) outlines the remedies that the Commission may pursue for violations  
not subject to RCW 19.405.090. The Commission may assess penalties of up to one  
thousand dollars for each violation. Violation of the same requirement in statute, rule, or  
commission order are separate and distinct violations, and each day the utility is not in  
compliance with these requirements is a separate and distinct violation.<sup>19</sup> The Commission  
may also order the utility to take specific actions, including customer notification.<sup>20</sup>

### V. FIRST CAUSE OF ACTION

20 The Commission realleges paragraphs 2 through 19, above.

21 PacifiCorp violated Order 01 of Docket UE-210829 by filing the Final CEIP with a CEIP  
preferred portfolio that did not incorporate the SCGHGs as explicitly ordered in paragraphs  
11 and 18 of the order.

22 PacifiCorp violated RCW 19.280.030(3)(a)(iii) by not including the SCGHG as a cost adder  
when “evaluating and selecting intermediate and long-term resource options.” The CEIP is a  
process in which electric utilities evaluate and select intermediate and long-term resource  
options. In Order 01, the Commission agreed with Staff’s position that based on the  
statutory interpretation the Commission outlined in the adoption order, RCW  
19.280.030(3)(a)(iii) requires CEIP preferred portfolios to incorporate the SCGHGs.

---

<sup>18</sup> WAC 480-100-665(2).

<sup>19</sup> RCW 80.04.380.

<sup>20</sup> WAC 480-100-665(3)(c) & (d).

- 23 PacifiCorp violated RCW 19.280.030(3)(a)(ii) by not including the SCGHGs as a cost adder when “[d]eveloping integrated resource plans and clean energy action plans.” By the Company’s admission in the November 2021 petition, the IRP’s preferred portfolio did not include the SCGHGs, and this was incorporated into the CEIP preferred portfolio. As the Commission recognized in the adoption order, the CEIP preferred portfolio must account for the SCGHGs.<sup>21</sup>
- 24 PacifiCorp violated WAC 480-100-640(7) and WAC 480-100-660(4) because the projected incremental cost calculation in the Final CEIP did not include the SCGHGs in the CEIP preferred portfolio (referred to as “lowest reasonable cost portfolio” under WAC 480-100-660). This incorrect input will guarantee that the projected incremental cost will be calculated incorrectly.

#### VIII. REQUEST FOR RELIEF

- 25 Staff requests that the Commission find that PacifiCorp is in violation of statute, Commission rule, and Commission order since the filing of the final CEIP on December 30, 2021. Under WAC 480-100-665(3)(b)(i) and RCW 80.04.380, each violation of statute, rule, or order is subject to a penalty not to exceed one thousand dollars. Therefore, Staff requests that the Commission consider a maximum of one thousand dollar per day penalty against PacifiCorp for violation of Order 01 in Docket UE- 210829, WAC 480-100-640(7), WAC 480-100-660(4), RCW 19.280.030(3)(a)(ii) and RCW 19.280.030(3)(a)(iii).<sup>22</sup> As of May 25, 2022, this would be 146 days of five separate violations, totaling \$730,000. Each additional day that the CIEP is not revised to comply with Order 01, Commission rule, and statute will increase the potential maximum penalty. Staff requests that the Commission assess a fair and just penalty considering the maximum potential penalty and the totality of the circumstances.
- 26 Staff also requests that the Commission order PacifiCorp to rerun its CEIP model using the SCGHG in accordance with the provisions noted above and submit a new CEIP preferred portfolio in compliance with Order 01, Commission rule, and statute. Staff believes that properly including the SCGHGs into the preferred portfolio may have a meaningful impact on resource acquisition decisions.

---

<sup>21</sup> CETA Rulemaking Order at 17, ¶ 37.

<sup>22</sup> Violations of RCW 19.280.030(3)(a)(ii) and (iii) are via RCW 19.405.060(1)(b).

27 Staff further requests that the Commission order such other or additional relief as is appropriate under the circumstances.

### IX. PROBABLE CAUSE

28 Based on a review of statute, rule, Commission order, and PacifiCorp's Final CEIP filed on December 30, 2021, the Commission finds probable cause exists to issue this Complaint.

### VIII. NOTICE OF PREHEARING CONFERENCE

29 The Commission will hear this matter under the Administrative Procedure Act (APA), particularly Part IV of RCW 34.05 relating to adjudications. The provisions of the APA that relate to this proceeding include, but are not limited to RCW 34.05.413, RCW 34.05.422, RCW 34.05.431, RCW 34.05.440, RCW 34.05.449, and RCW 34.05.452. The Commission's procedural rules, chapter 480-07 WAC, will apply in this proceeding.

30 **THE COMMISSION GIVES NOTICE that it will hold a virtual prehearing conference in this matter at 1:30 p.m. on June 30, 2022. To participate by phone, call (253) 215-8782 and enter the Conference ID: 811 1982 4337# and use the Passcode: 539969#. To attend via Zoom, use the following link: [Click here to join the meeting.](#)**

31 The purpose of the prehearing conference is to consider requests for intervention, resolve scheduling matters including establishing dates for distributing evidence, identify the issues in the proceeding, and determine other matters to assist the Commission in resolving the matter, as listed in WAC 480-07-430.

32 **INTERVENTION:** Persons who wish to intervene should file a petition to intervene in writing at least three business days before the date of the prehearing conference. *See* WAC 480-07-355(a). The Commission will consider oral petitions to intervene during the conference, but strongly prefers written petitions to intervene. Party representatives must file a notice of appearance with the Commission no later than the business day before the conference. *See* WAC 480-07-345(2). Parties with more than one representative must identify one individual as the "lead" for purposes of official service. Any party or witness in need of an interpreter or other assistance should fill out the form attached to this notice and return it to the Commission. The Commission will set the time and place for any evidentiary hearings at the prehearing conference, on the record of a later conference or hearing session, or by later written notice.



33 **THE COMMISSION GIVES NOTICE** that any party who fails to attend or participate in the prehearing conference set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440 and WAC 480-07-450.

34 The names and mailing addresses of all known parties and their known representatives are as follows:

Respondent: Zachary Rogala  
Pacific Power & Light Company  
825 NE Multnomah St., Suite 1800  
Portland, OR 97232  
[Zachary.Rogala@pacificorp.com](mailto:Zachary.Rogala@pacificorp.com)  
[datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)

Complainant: Washington Utilities and Transportation Commission  
621 Woodland Park Loop SE  
P.O. Box 47250  
Olympia, WA 98504-7250  
(360) 664-1160

Representative: Nash Callaghan, WSBA No. 49682  
Assistant Attorney General  
Office of the Attorney General  
Utilities and Transportation Division  
P.O. Box 40128  
Olympia, WA 98504-0128  
(360) 915-4521  
[nash.callaghan@utc.wa.gov](mailto:nash.callaghan@utc.wa.gov)

Public Counsel  
Representative: Lisa Gafken  
Nina Suetake  
Ann Paisner  
Office of the Attorney General  
Public Counsel Unit  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
(206) 464-6595  
[Lisa.Gafken@atg.wa.gov](mailto:Lisa.Gafken@atg.wa.gov)

[Nina.Suetake@atg.wa.gov](mailto:Nina.Suetake@atg.wa.gov)  
[Ann.Paisner@atg.wa.gov](mailto:Ann.Paisner@atg.wa.gov)  
[Chanda.mak@atg.wa.gov](mailto:Chanda.mak@atg.wa.gov)  
[Brice.hartman@atg.wa.gov](mailto:Brice.hartman@atg.wa.gov)  
[PCCSeaEF@atg.wa.gov](mailto:PCCSeaEF@atg.wa.gov)

- 35 Administrative Law Judge Andrew J. O’Connell, from the from the Commission’s Administrative Law Division, will preside during this proceeding.<sup>23</sup>
- 36 The Commission will give parties notice of any other procedural phase of the proceeding in writing or on the record, as appropriate during this proceeding.

DATED at Lacey, Washington, and effective June 6, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

*/s/ Rayne Pearson*  
Rayne Pearson  
Administrative Law Director

Inquiries may be addressed to:

Amanda Maxwell  
Executive Director and Secretary  
621 Woodland Square Loop S.E.  
P.O. Box 47250  
Olympia, WA 98504-7250  
(360) 664-1160

---

<sup>23</sup> Judge O’Connell can be reached at [andrew.j.oconnell@utc.wa.gov](mailto:andrew.j.oconnell@utc.wa.gov) or (360) 664-1285.

**NOTICE**

Hearings are accessible to persons with disabilities and persons who do not speak English as a first language. If limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

If you need an interpreter, or have other special needs, please provide the information requested below via email to Paige Doyle, paralegal, at [paige.doyle@utc.wa.gov](mailto:paige.doyle@utc.wa.gov):

(PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket: \_\_\_\_\_

Case Name: \_\_\_\_\_

Hearing Date: \_\_\_\_\_ Hearing Location: \_\_\_\_\_

Primary Language: \_\_\_\_\_

Hearing Impaired: (Yes) \_\_\_\_\_ (No) \_\_\_\_\_

Do you need a certified sign language interpreter:

Visual \_\_\_\_\_ Tactile \_\_\_\_\_

Other type of assistance needed: \_\_\_\_\_