BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PACIFICORP D/B/A PACIFIC POWER & LIGHT COMPANY, Respondent.	DOCKET NO. UE-100749

REPLY BRIEF OF PUBLIC COUNSEL

FEBRUARY 18, 2011

REDACTED VERSION

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I. INTRODUCTION

1. Public Counsel files this reply brief in response to arguments made in the initial briefs of PacifiCorp and Commission Staff. Public Counsel continues to advocate for every recommendation set out in its initial Post-Hearing Brief, although to avoid repetition, does not address them all here.

II. RESIDENTIAL REVENUE NORMALIZATION

2. Neither PacifiCorp nor Staff has adequately supported their recommendations that the Commission accept PacifiCorp's proposed adjustment to residential usage.

A. PacifiCorp Mischaracterizes the 2005 and 2009 General Rate Cases.

3. In its Initial Brief, PacifiCorp relies upon an incorrect interpretation of the Commission's decision in its 2005 general rate case.[1] The Company states that its proposed weather normalization methodology was "approved" by the Commission in that case.[2] This is a mischaracterization. While the Commission stated it was "encouraged about refinements to PacifiCorp's methodology agreed to in the stipulation and the commitment to begin collaborative discussions with interested parties on this issue,"[3] it did *not* approve the methodology outright. Instead, the Commission allowed it only as an "*interim solution*" for the Company's next rate

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[1] *WUTC v. PacifiCorp, d/b/a Pacific Power & Light,* Docket No. UE-050684, Final Order (Order 04) (hereinafter *2005 GRC Order*).
[2] PacifiCorp's Initial Post-Hearing Brief, ¶ 57.
[3] *2005 GRC Order,* ¶ 116 (the Commission discussed, but did not fully approve, a proposed settlement stipulation in that case).

case, stating that it *made progress toward* an acceptable methodology.[4]

4. What the 2005 rate case did make clear was that the settlement provision related to the methodology for temperature normalization was *not* to be cited as precedent in any case beyond the 2006 rate case. The parties agreed in the settlement stipulation that,

> [b]y executing this Stipulation, no Party shall be deemed to have agreed that any provision of this Stipulation is appropriate for resolving issues in any other proceeding, except as previously identified in Paragraph 6 of this Stipulation. With that exception, this Stipulation shall not be cited as precedent in any proceeding other than a proceeding to enforce this Stipulation.[5]

5. PacifiCorp also cites the settlement stipulation in its 2009 rate case to support its opposition to Mr. Meyer's residential usage analysis.[6] This ignores that, as a general matter, settlements are non-precedential and that the Commission's approval of a term in a settlement is "not to be construed as approval, acceptance or consent by the Commission to any facts or ratemaking principals or methods....for purposes of any future rate proceedings."[7] This means that the Commission is in no way bound by the methodology used in the 2009 settlement.

6. Even if this were not the case, the terms of the 2009 stipulation specifically reserved the right to challenge the Company's methodology. In approving the stipulation, the Commission *encouraged and supported* such challenges and further scrutiny of the Company's methodology.[8] The results of Mr. Meyer's analysis (comparing recent actual residential usage to the Company's proposed level of usage) is just the type of new information that warrants such a challenge, and is the type of scrutiny that the Commission encouraged parties to engage in.

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[4] *Id.* at ¶ 117 (emphasis added).
[5] *Id.* at Appendix 1, p. 6.
[6] PacifiCorp's Initial Post-Hearing Brief, ¶ 57.
[7] *WUTC v. Northwest Natural Gas Co.*, Docket No. U-86-41, Third Suppl. Order, p. 3.
[8] *WUTC v. PacifiCorp, d/b/a Pacific Power & Light,* Docket No. UE-090205, Final Order (Order 09), ¶ 60.

B. PacifiCorp has Not Shown that an Adjustment to Test Year Actual Residential Usage is Proper.

7. PacifiCorp has proposed a usage level that is strikingly lower than what actual usage has been in *any of the last five years*,[9] yet it has offered no evidence in this case or argument in its brief as to why the Commission should accept this adjustment. Instead, the Company relies entirely on a faulty argument related to "precedent." Neither the 2005 nor 2009 general rate cases established a firm usage normalization methodology. Rather, as discussed previously, both of those cases sought future scrutiny of the temperature normalization methodology proposed by the Company.

C. The Criticisms of Mr. Meyer's Residential Usage Analysis Offered by PacifiCorp are Inaccurate.

8. In their briefs, PacifiCorp and Staff both claim that Mr. Meyer's analysis did not consider the impact of weather on usage.[10] This is simply not true. While Mr. Meyer did not apply the Company's weather normalization methodology—for the obvious reason that he did not accept it—his analysis *does* take weather into consideration because each of the past five years of actual usages reflects the impact of weather in those years.[11] For each of those years, residential usage would inherently reflect the impact of weather on the amount of electricity used by residential customers.

9. In addition, Staff's argument that Mr. Meyer failed to "directly challenge any of the equations, models or other features of the Company's…adjustment" is myopic.[12] Staff appears to have become so mired in the technicalities of weather normalization that it has lost the forest

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[9] Post-Hearing Brief of Public Counsel, ¶¶ 55-56.
[10] PacifiCorp's Initial Post-Hearing Brief, ¶ 55; Initial Brief on Behalf of Commission Staff, ¶ 17.
[11] Meyer, TR. 486:13-17.
[12] Initial Brief on Behalf of Commission Staff, ¶ 20.

for the trees. According to the Company's normalization methodology, residential customer usage during the rate-effective period will decline dramatically below what it has been in any of the last five years. Nowhere in this case has Staff provided an explanation for why the Commission should accept such a questionable assumption.

III. COMPENSATION

10. PacifiCorp's and Staff's critiques of the proposed adjustments to 2009 and 2010 wages, incentive compensation, and MEHC bonuses are weak and do not justify including these improper costs in rates.

A. 2009 Wage Increase Adjustment.

1. A comparison of the officer/exempt labor group to all other employees, including union employees, is the most accurate means available for calculating a reasonable 2009 wage increase for highly-paid employees.

11. Staff argues that Mr. Meyer's recommended adjustment to 2009 officer/exempt wage increases is improper. Staff's primary criticism of Mr. Meyer's analysis is that it does not differentiate for various employee classifications within the officer/exempt labor group.[13] However, this ignores the fact that PacifiCorp did not provide information that would have allowed for the identification of this subset of employees within the larger group, and thus provided no means by which any party could perform analysis related to its specific wage increases.[14]

12. PacifiCorp and Staff further argue that Mr. Meyer's recommendation is flawed because union employees are included in the overall group to which Mr. Meyer compared officer/exempt wages. They assert that union employees receive different levels of benefits than non-union

[13] Initial Brief on Behalf of Commission Staff, ¶¶ 44-47.
[14] Post-Hearing Brief of Public Counsel, ¶ 19.

officer/exempt employees, thus not allowing for an "apples to apples" comparison.[15] Yet, neither Staff nor PacifiCorp offers any quantification of such benefits, nor is there any specific discussion detailing how those benefits are of greater value than the benefits and incentives that are provided to non-union employees.[16]

2. Staff incorrectly claims that comparisons of Washington electric IOUs' compensation practices are "not helpful."

13. Staff argues that Mr. Meyer's discussion of Avista's and PSE's compensation practices "is not helpful" in this case.[17] While reviewing the voluntary practices of other utilities is not a precise science, it does however, provide insight into current economic conditions and an example of how in the midst of a period of ongoing economic distress, utilities can find ways to cut costs. Wage increases generally are determined and evaluated based on market trends.[18] Additionally, this Commission has looked to the voluntary practices of other utilities when determining the proper rate treatment for employee compensation.[19] Indeed, PacifiCorp itself provides as primary support for its wage expenses comparisons to other utilities' practices.[20]

14. Mr. Meyer's example of how PSE and Avista have adjusted their compensation practices in light of the current economy is helpful in this case because it illustrates that PacifiCorp could have pursued other options. Additionally, Mr. Meyer's analysis highlights a weakness in PacifiCorp's argument. The Company selected a narrow group that specifically defended its own actions, in that it only included utilities that increased wages in 2009, although that clearly

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[15] PacifiCorp's Initial Post-Hearing Brief, ¶ 125; Initial Brief on Behalf of Commission Staff, ¶ 47.
[16] PacifiCorp's Initial Post-Hearing Brief, ¶ 125; Initial Brief on Behalf of Commission Staff, ¶ 47.
[17] Initial Brief on Behalf of Commission Staff, ¶ 46.
[18] Wilson, TR. 389:5-9.
[19] *WUTC v. Puget Sound Energy, Inc.*, Docket Nos. UE-090704 & UG-090705 (consolidated), Final Order (Order 11), ¶¶ 74-81.
[20] *See* PacifiCorp's Initial Post-Hearing Brief, ¶¶ 124-25; Exh. No. EDW-3T 13:20-14:2 (Wilson Rebuttal); Exh. No. EDW-5C.

has not been the current practice of many companies regionally, nationally, within the utility sector, or beyond.[21]

3. PacifiCorp inaccurately claims that adjusting 2009 wages is "inconsistent with Commission precedent."

15. PacifiCorp relies on the Commission's order in the 2009 Avista general rate case, in which the Commission rejected a recommendation by witness, Mr. Hugh Larkin, to annualize executive salaries based on the increase granted to administrative employees.[22] However, the Commission's decision in that case offers little guidance here. In that case, the Commission evaluated the proposed adjustment based on a limited amount of evidence offered in support of the adjustment and rejected it for that lack of support.[23] Here, on the other hand, ICNU and Public Counsel have offered ample support for their adjustment.[24]

16. More relevant in this case is the Commission's previous declaration that, while a utility is free to pay its employees whatever it chooses, only a reasonable level of compensation may be included in rates.[25] Based on the evidence presented by ICNU and Public Counsel, a 2.07 percent is a more reasonable level of wage increase to include in rates for officer/exempt employees.

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[21] Post-Hearing Brief of Public Counsel, ¶ 22-23; Post-Hearing Brief on Behalf of ICNU, ¶ 108. PacifiCorp confirmed this fact at hearing. *See* Wilson, TR. 389:18-20.

[22] PacifiCorp's Initial Post-Hearing Brief ¶ 125 (*citing WUTC v. Avista Corp., d/b/a Avista Utilities*, Docket No. UE-090134, Final Order (Order 10), ¶ 111 (hereinafter *Avista 2009 GRC Order*)).

[23] The Commission's decision in that case was that Public Counsel had not provided a "compelling reason" for the adjustment. *See Avista 2009 GRC Order* at ¶ 111. A review of the testimony and brief in that case shows that, in fact, Mr. Hugh Larkin offered almost no reason for his adjustment, instead simply stating that what he had done in his annualizing adjustment. *See* Exh. No. HL-1T, pp. 12:15-13:16 (Larkin Responsive); Brief of Public Counsel, ¶ 613 (Nov. 10, 2009).

[24] Exh. No. GRM-1CT, pp. 31-32 (Meyer Responsive), Public Counsel Brief, ¶¶ 22-23.

[25] *WUTC v. Avista,* Docket Nos. UE-991606 & UG-991607 (consolidated), Final Order, ¶ 253 (disallowing a portion of CEO compensation, stating that the Company's Board of Directors is "free to pay whatever compensation it believes is necessary….[b]ut ratepayers should only pay a reasonable CEO salary…").

B. PacifiCorp Incorrectly Asserts that its 2010 Pro Forma Wage Increase is Known and Measurable.

17. PacifiCorp argues that its pro forma adjustment to increase test-year wages to reflect 2010 salary increases is proper because the increases are "known and measurable."[26] Staff also supports this adjustment as known and measurable, stating that the increases were "real, contractual and [in] effect."[27]

18. The Commission requires that a proposed pro forma adjustment be calculated based on known and measurable items, and will not accept pro forma adjustments based on a company's unsupported projections.[28] However, while the percent by which individual salaries rose may have been known and measurable, the employee count used to calculate the total increase was not. In its brief, Staff acknowledges that the workforce levels relied upon by PacifiCorp for calculating the 2010 pro forma adjustment were *not the actual* 2010 workforce levels, but rather the workforce levels that the Company *projected* it may reach at some indefinite point in the future.[29] Thus, PacifiCorp's projections regarding future hiring practices cannot support a pro forma adjustment and therefore should be rejected.[30]

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[26] PacifiCorp's Initial Post-Hearing Brief, ¶¶ 126-127.

[27] Initial Brief on Behalf of Commission Staff, ¶ 48. Staff unnecessarily complicates this issue through a discussion of offsetting factors and offsets to offsets. In fact, the issue is clear—PacifiCorp has simply not met its burden of supporting its proposed pro forma adjustment.

[28] *WUTC v. Puget Sound Energy, Inc.*, Docket Nos. UE-090704 & UG-090705 (consolidated), Final Order (Order 11), ¶ 26 (stating, "the actual amount of the change must be measurable. This means that the amount typically cannot be an estimate, a projection, the product of a budget forecast, or some similar exercise of judgment – even informed judgment, concerning figure revenue, expense, or rate base") (hereinafter *PSE 2009 GRC*).

[29] Staff acknowledges that PacifiCorp's actual workforce levels have been steadily declining over the last two years, stating that the reductions "appear to be due to a hiring lag, not a permanent work force reduction," and that "the positions are available and expected to be filled." Initial Brief on Behalf of Commission Staff, ¶ 53.

[30] *See e.g., PSE 2009 GRC*, ¶ 59 (rejecting the Company's pro forma adjustment for property taxes that are calculated based in-part on Company projections).

C. Recovery of MEHC Bonuses is Improper Regardless of Compliance with the Merger Commitment.

19. Both PacifiCorp and Staff argue in favor of not disallowing MEHC bonuses on the basis that the Company's rebuttal position (to include $7.1 million for the MEHC management fee) complies with the $7.3 million cap developed as a condition in the MEHC merger.[31] However, this fact is not relevant to ICNU and Public Counsel's recommendation. This is shown below:

TABLE 1: MANAGEMENT FEE COMPONENTS[32]

MEHC Original Invoices (000's)	$ 11,568
Remove the following items:	
Amount capitalized	(206)
Legislative	(331)
Aircraft > commercial equivalent	(709)
LTIP	(2,889)
SERP	(322)
Total	**$7,111**

20. Thus, the relevant concern here is whether PacifiCorp has adequately supported its proposal to recover from customers the substantial bonuses paid to MEHC and MEC executives, which are included in the $7.1 million. The record is clear that it has not. PacifiCorp offered no support for recovery of these costs, acknowledging in its brief that parties had to look outside this docket—to the MEHC 10-K—for any discussion of these bonuses.[33] To justify inclusion, PacifiCorp then relies entirely on a single sentence of that document, which makes general, unsupported claims about the basis of MEHC bonuses.[34] This single sentence offers no evidence of any benefit received by PacifiCorp's customers from bonuses paid to executives of PacifiCorp's parent company, and thus cannot support inclusion of these bonuses in rates.

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[31] Initial Brief on Behalf of Commission Staff, ¶ 62; PacifiCorp's Initial Post-Hearing Brief, ¶ 131.
[32] Exh. No.DKS-1T, p. 4 (Stuver Rebuttal).
[33] PacifiCorp's Initial Post-Hearing Brief, ¶ 130.
[34] PacifiCorp's Initial Post-Hearing Brief, ¶ 130.

21. In addition, PacifiCorp argues that the inter-company affiliated services agreement (IASA) provides benefits to customers by allowing the Company to receive services that lower the Company's costs overall.[35] However, while PacifiCorp may receive some services at a lower cost than it would be able to receive outside the IASA, this does not mean it is justified in recovering excessive and unsupported MEHC bonuses.

22. Staff, likewise, offers no support for its recommendation to include MEHC.[36] Staff does not dispute that the amount sought by the Company includes MEHC bonuses, instead focusing entirely on the fact that the total amount in the Company's rebuttal case is below the merger cap.[37] The cap is intended to be an upper limit on charges that can MEHC can pass to PacifiCorp customers, not a measure of whether the expenses included are acceptable. Improper and unsupported expenses should not receive a pass simply because the total amount requested falls below the cap's limit. The cap itself is not a measure of what is prudent.

D. Public Counsel and ICNU's Incentive Compensation Adjustment Does Not Constitute "Micromanagement" of the Company's Practices.

23. Staff argues that the Commission should reject Mr. Meyer's recommendation to disallow a portion of PacifiCorp's Annual Incentive Plan (AIP) because it micromanages PacifiCorp's corporate wage policies. Staff argues that the Commission is concerned *only* about whether overall compensation is reasonable.[38] However, Staff fails to recognize that the Commission has

[35] PacifiCorp's Initial Post-Hearing Brief, ¶ 129.
[36] Initial Brief on Behalf of Commission Staff, ¶¶ 59-63.
[37] *Id.*
[38] *Id.* at ¶¶ 55-58.

consistently looked at many companies' incentive plans and reviewed the structure of these to determine whether costs of the plans can be appropriately recovered through rates.[39]

24. PacifiCorp is the party requesting to recover incentive compensation costs, and therefore bears the full burden of showing that the costs of its program are recoverable under Washington precedent. Washington precedent requires PacifiCorp to show a clear and direct customer benefit from its incentive program, which the Company has not done here.[40]

25. PacifiCorp's vague and self-serving statements regarding customer benefits are not adequate evidentiary support, and the Commission should not accept them as such. The record shows that PacifiCorp has offered no evidence of quantifiable or demonstrable benefits or improvements to performance as a result of its incentive program.[41] Moreover, Staff agrees that certain performance goals are not quantifiable, and that PacifiCorp rarely fails to pay incentives to all of its employees.[42] Even the Company admits that the program's goals relate only to normal job performance and not above average or superior performance.[43] In the end, rather than providing evidence to substantiate its claims, the Company resorts to an overly broad attempt to discredit Mr. Meyer's recommendation by taking one portion of his hearing testimony

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[39] *See e.g., WUTC v. Puget Sound Power & Light,* Docket No. UE-920433 et al, Eleventh Suppl. Order, p. 61 (holding, "[t]he Commission agrees that the Pay-at-risk plan should not be allowed as an operating expense); *WUTC v. Avista Corp., d/b/a Avista Utilities,* Docket Nos. UE-991606 & UG-991607 (consolidated), Third Suppl. Order, ¶¶ 268-273 (stating in part, "the Commission approves the Staff and Public counsel [sic] adjustment to remove team incentive bonuses"); *WUTC v. Puget Sound Energy Inc.*, Docket No. UG-040640 et al, Final Order (Order 06), ¶¶ 141-146 (allowing incentive plan costs after finding that the plan included goals "that directly benefit ratepayers" and that those goals were a threshold for any plan payments); *WUTC v. U.S. West*, Docket No. UT-950200, Fifteenth Suppl. Order, pp. 47-49 (accepting Staff's recommendation to disallow incentive program costs where customer service goals were eclipsed by non-customer-related goals); *WUTC v. Avista Corp., d/b/a Avista Utilities*, Final Order (Order 10), ¶¶ 124-129 (stating that it previously disallowed Avista's program costs because the program "was not tied to ratepayer benefit," rejecting proposed adjustments because of insufficient record, and instructing the Company parties to "review the program for a more thorough evaluation" in a future rate case).
[40] *WUTC v. Washington Natural Gas Co.*, Docket No. UG-920840, Fourth Suppl. Order, p. 19.
[41] Wilson, TR. 401:3-11 (confirming that PacifiCorp provided no actual data on improvements in safety, customer service, or operational output).
[42] Staff's Initial Post-Hearing Brief, ¶ 57.
[43] Wilson, TR. 415: 11-19.

out of context. PacifiCorp states that Mr. Meyer is not knowledgeable about the Company's incentive programs, [44]despite the fact that Mr. Meyer's direct testimony clearly indicates that he reviewed the Company's program and is knowledgeable regarding its operation and structure.

IV. RENEWABLE ENERGY CREDIT (REC) SALES REVENUE

26. PacifiCorp's support for its proposed REC revenue adjustment and its opposition to a regulatory liability account for future revenues are both unfounded.

A. PacifiCorp's Claim that its Proposed $5 Million Credit Reflects Expected REC Revenues is Not Credible.

27. PacifiCorp asserts that its agreement in rebuttal to credit $5 million to base rates for rate-effective period REC revenues "accurately reflects expected REC revenues."[45] However, the Company has provided no support for why $5 million is an accurate projection. Moreover, PacifiCorp has a long history of underreporting and under-reflecting REC revenues.[46] This trend has continued in this case, as described in ICNU's Initial Brief, where ICNU shows that the Washington-allocated revenue for 2010, if annualized, is actually estimated at closer to $10 million.[47] Given that the Company has in place **[Begin Confidential]** XXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX **[End Confidential]** the

[44] PacifiCorp's Initial Post-Hearing Brief, ¶ 122. The statement was taken out of context as Mr. Meyer was merely attempting to convey that PacifiCorp has the most complete knowledge of the development and structure of its own incentive compensation program. Mr. Meyer's knowledge of the Company's incentive program is evidenced through his pre-filed direct testimony in this docket.
[45] PacifiCorp's Initial Post-Hearing Brief, ¶ 61.
[46] Post-Hearing Brief on Behalf of ICNU, ¶ 36; Post-Hearing Brief of Public Counsel, ¶ 61.
[47] Post-Hearing Brief on Behalf of ICNU, ¶ 35. Indeed, $10 million may not even "go far enough" to accurately represent the level of REC revenues PacifiCorp will receive. *See* Post-Hearing Brief on Behalf of ICNU, ¶ 36.

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Company's unsupported assertion that $5 million accurately reflects future REC revenues is simply not credible.[48]

B. The Company's Continued Opposition to Regulatory Liability Accounting for REC Revenues is Unfounded.

28. No party contests that REC revenues should be returned to ratepayers "dollar for dollar."[49] Yet, in its brief, PacifiCorp continues to resist developing a means to account for these considerable revenues and simply reiterates its three previous critiques of Staff's proposal to track REC revenues through a regulatory liability account.[50] As discussed at length by Public Counsel and other parties in initial briefs, these critiques are meritless.

V. RATE SPREAD AND RATE DESIGN

29. The record in this case supports assigning residential customers no more than the overall average increase and retaining the current residential fixed charge.

A. Staff and PacifiCorp's Request to Assign a Higher-than-Average Increase to Residential Customers is Unsupported.

30. Staff argues that its proposed rate spread, which assigns residential *and* industrial customers a higher-than-average increase, is reasonable, fair, balanced, and cost-based.[51] Staff goes on to discuss that industrial customers, Schedule 48T, have been chronically below parity. However, Staff does not mention that, unlike Schedule 48T, residential customers have *not* been chronically below parity. In fact, Staff's own analysis shows that residential customers were *actually at or above parity* in the two most recent rate cases.[52] Thus, neither Staff nor PacifiCorp have shown that residential customers should likewise be assigned an above-average increase.

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[48] Exh. No. MDF-1CT, pp. 13-14 (Foisy Responsive).
[49] Staff's Initial Post-Hearing Brief ¶ 25; PacifiCorp's Initial Post-Hearing Brief, ¶ 65.
[50] PacifiCorp's Initial Post-Hearing Brief, ¶ 62-67.
[51] Staff's Initial Post-Hearing Brief, ¶ 218.
[52] Exh. No. TES-4T, p. 11:10 (Schooley Cross-Answering); Post-Hearing Brief on Behalf of ICNU, ¶ 104.

31. Moreover, both Staff and PacifiCorp have consistently failed throughout this case to analyze the numerous other factors relevant to determining the appropriate rate spread. Instead, these parties have focused entirely on the Company's single cost of service study and on a "mechanical application" of the results of this study, an approach rejected by this Commission.[53] Neither Staff nor PacifiCorp offered evidence regarding the impact that any increase would have on residential customers as compared to other classes. This factor is integral to a determination of proper revenue allocation and should not be overlooked.

B. No Increase to the Residential Fixed Charge is Warranted in this Case.

32. PacifiCorp disputes The Energy Project's recommendation to maintain the current $6.00 fixed customer charge by stating that its proposed increase does not send an anti-conservation message.[54] However, the Company fully recognizes in its brief that increasing fixed costs *does just that*, stating that increasing the energy charge, not the fixed charge, sends the conservation signal to customers.[55] At the same time, PacifiCorp continues to neglect the consideration of other factors relevant when determining the proper rate design.

33. Staff's continued support for a higher fixed charge, as necessary to compensate PacifiCorp for fixed costs, is unsupported. Staff does not contest that the determination of fixed costs is subjective and can change dramatically based on the context.[56] Despite this, Staff did *no* independent analysis of which costs *are* actually fixed. Nor did Staff even acknowledge the fact that, like all regulated utilities, PacifiCorp has an incentive to inflate what it classifies as "fixed"

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[53] *See WUTC v. Pacific Power & Light Co.*, Docket No. U-84-65, Fourth Suppl. Order, p. 41-42; Post-Hearing Brief on Behalf of ICNU, ¶ 99.
[54] Initial Brief of The Energy Project, p. 24.
[55] *See* PacifiCorp's Initial Post-Hearing Brief, ¶ 137.
[56] *See* Initial Brief of The Energy Project, p. 22 (discussing the inherent subjectivity of determining customer-related costs).

costs to the greatest extent possible, thereby justifying a higher fixed charge and obtaining even greater revenue certainty for the Company.[57] Thus, Staff's poorly supported and one-sided analysis should not be relied upon in this case.

34. Staff and PacifiCorp both dispute the testimony of The Energy Project regarding the impact of a higher fixed charge on low-income customers, despite the fact that, unlike Staff and PacifiCorp, the Energy Project is charged solely with representing the interest of low-income customers in this case. Moreover, the Energy Project has the most contact with these customers and therefore has a better understanding of their usage and how various rate structures may impact them. Thus, the Commission should look to The Energy Project when considering whether a higher fixed charge is detrimental to low-income customers and disregard the Company's biased and less-informed argument that increasing the fixed charge will not disproportionately impact low-income customers.[58]

VI. CONCLUSION

35. For the foregoing reasons, and those set out in its initial brief, Public Counsel respectfully requests the Commission to adopt its recommendations.

36. DATED this 18th day of February, 2011.

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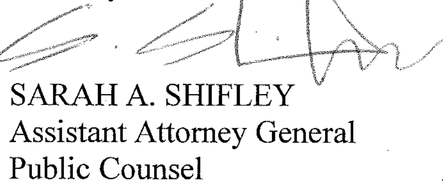

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[57] *See* Schooley, TR. 780:5-9; Initial Brief of The Energy Project, p. 25.
[58] The Energy Project has shown that Staff's and PacifiCorp's statements regarding the energy use of low-income customers are unsupported and lack merit. *See* Initial Brief of The Energy Project, pp. 23-24.