

CONFIDENTIAL
Exhibit No. ___ (ALK-2CT)
Docket UE-100749
Witness: Andrea L. Kelly

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

vs.

PACIFICORP dba Pacific Power & Light
Company

Respondent.

Docket UE-100749

PACIFICORP

REDACTED PHASE II REBUTTAL TESTIMONY OF ANDREA L. KELLY

September 2011

1 **Q. Are you the same Andrea L. Kelly that previously provided testimony in this**
2 **docket?**

3 A. Yes.

4 **Purpose and Summary of Testimony**

5 **Q. What is the purpose of your rebuttal testimony?**

6 A. My rebuttal testimony responds to the direct testimony of Commission Staff
7 (Staff) witness Kathryn H. Breda and the direct testimony of Industrial Customers
8 of Northwest Utilities and Public Counsel (ICNU/PC) joint witness Donald W.
9 Schoenbeck. Specifically, my testimony:

- 10 • Demonstrates that Staff's and ICNU/PC's proposals are one-sided and
11 inappropriately isolate one cost element from prior periods without
12 regard for the Company's overall earnings levels;
- 13 • Discusses the negative policy ramifications associated with adoption
14 of Staff's or ICNU/PC's proposals; and
- 15 • Responds to Staff's and ICNU/PC's unsupported recommendation to
16 alter the design of the tracking mechanism.

17 **Q. Are there other Company witnesses sponsoring rebuttal testimony?**

18 A. Yes. Company witnesses Stacey J. Kusters and R. Bryce Dalley are also
19 sponsoring rebuttal testimony.

20 **Q. Does your testimony address the legal definition of retroactive ratemaking?**

21 A. No. My direct and rebuttal testimony do not address the legal definition of
22 retroactive ratemaking. The Company's post-hearing brief will outline the legal
23 prohibitions barring adoption of Staff's and PC/ICNU's proposals. Irrespective of

1 the Commission's legal determination on retroactive ratemaking, however, my
2 testimony demonstrates why a decision to credit to customers additional REC
3 revenues from 2009 and 2010 is poor policy and would further exacerbate an
4 already challenging regulatory and business climate for the Company in
5 Washington.

6 **Q. What are the most troubling aspects of the parties' proposals?**

7 A. The proposals of Staff and ICNU/PC cherry-pick cost and revenue elements that
8 were set in prior proceedings and seek dollar-for-dollar true-up of these elements
9 years later without regard to the fact that the Company significantly under earned
10 throughout the entire period in question. These proposals are inconsistent with
11 fundamental tenets of ratemaking. If adopted, they could also undermine the
12 settlement process and result in full litigation of all rate cases. These problems
13 are compounded by the fact that Staff and ICNU/PC have attempted to expand the
14 scope of this proceeding to increase the potential REC credit. Staff's proposal in
15 particular continues to be a moving target in this regard.

16 **Q. Please elaborate on your first concern.**

17 A. Staff's testimony acknowledges that since Docket UE-080220, the Commission
18 has set rates for the Company using a forecast level of revenues from renewable
19 energy credit (REC) sales for the rate effective period.¹ This is consistent with
20 the practice of the Commission to utilize a forecast of net power costs for the rate
21 effective period. It is uncontroverted that the Company used a forecast REC
22 revenue level for the 12-months ending June 2008 in Docket UE-080220 and used

¹ *Wash. Util. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Exhibit No.____(KHB-7TC), page 11, lines 3 and 4.

1 a forecast REC revenue level for calendar year 2010 in Docket UE-090205.

2 Notwithstanding this history, the proposals of Staff and ICNU/PC are
3 premised on the argument that 2009 REC revenue levels should be *re-established*
4 in this proceeding based on a 2009 historic actual level and credited to customers
5 through a balancing account. On top of this, the parties also propose to capture
6 the actual levels of 2010 revenues through this proceeding, even though 2010 is
7 neither the test period nor the rate effective period in this proceeding. This results
8 in the confiscation of three years of REC revenues in a single rate case
9 proceeding—the historic test year, the forecast rate period and the time period in
10 between. There is certainly no other cost or revenue element in this rate case that
11 is triple-counted in this manner.

12 **Q. Aside from the unfairness of these proposals as applied to this case, do you**
13 **have broader policy concerns regarding these proposals?**

14 A. Yes. If the Commission were to make the policy changes required to adopt
15 Staff's or ICNU/PC's proposals, parties could thereafter cherry-pick revenue and
16 cost elements from prior cases and attempt to true-up discrepancies from
17 historical periods in a one-sided manner that picks up only cost-savings but not
18 offsetting cost increases. It would also establish precedent for analyzing isolated
19 elements of a utility's costs and revenues without regard to the overall level of
20 earnings of the utility.

21 **Q. How is this approach one-sided?**

22 A. Establishing a combined historic and forecast dollar-for-dollar balancing account
23 for REC revenues generated in 2009 and 2010 and forecast for 2011 would never

1 be acceptable to parties if the same logic was applied to costs. This would be the
2 equivalent of the Company proposing in this docket to establish a dollar-for-dollar
3 balancing account for differences between forecast and actual net power costs
4 from Docket UE-080220 and Docket UE-090205, simultaneously with
5 establishing a new net power cost baseline in rates and a dollar-for-dollar
6 balancing account for the rate effective period and all periods going forward.
7 Given the Commission's rejection of the Company's proposal for a power cost
8 adjustment (PCA) mechanism in Docket UE-080220 and the inclusion of sharing
9 bands in the PCA's of Puget Sound Energy and Avista, it seems highly unlikely
10 that this "triple-count" proposal would be acceptable to parties and adopted by the
11 Commission. Yet, this is the precise proposal advocated for REC revenues in this
12 proceeding.

13 **Q. Are there any clear limitations on the policy changes implicated by Staff's**
14 **and ICNU/PC's proposals?**

15 A. No, and this raises the question: If one cost element in a rate case is ultimately
16 different from the actual cost in the rate effective period, will parties be able to
17 seek to true that up in a future rate case? There will always be differences in costs
18 and revenues between what was used to set rates and what was actually
19 experienced in the rate effective period.

20 **Q. How should the Commission address the Company's under forecast of REC**
21 **revenues in 2009 and 2010?**

22 A. The question that should be before this Commission is whether these forecast
23 differences unfairly benefitted the Company. The Company acknowledges that

1 the forecast of REC revenues in rates for 2009 and 2010 were far different than
2 the actual amount ultimately realized. As discussed later in my testimony, no
3 party challenged these forecasts at the time or sought deferred accounting. The
4 Commission can assess whether these differences were out of balance by looking
5 at the Company's overall return on equity for the relevant period, not by
6 evaluating one cost element in isolation. And, if the Commission concludes that
7 the Company is over-earning, there are established processes and procedures for
8 handling these circumstances on a forward-looking basis.

9 **Q. If the Commission decides to credit the favorable variance in actual vs.**
10 **forecast REC revenues from 2009 and 2010 to customers, is there an**
11 **offsetting unfavorable variance in actual vs. forecast costs from 2009 and**
12 **2010 that should be considered?**

13 A. Yes. As detailed in my Exhibit No.____(ALK-3), in both 2009 and 2010, actual
14 hydro conditions were less favorable than the level included in rates. In 2009,
15 hydro generation was approximately 105 average megawatts (aMW) below the
16 hydro generation included in the net power cost study in Docket UE-080220 and
17 in 2010 hydro generation was approximately 23 aMW below the hydro generation
18 included in the net power cost study in Docket UE-090205. The Washington-
19 allocated cost to the Company of this lower hydro generation, priced at market,
20 was \$7.9 million in 2009 and \$2.4 million in 2010. Recognition of these costs is
21 consistent with Commission precedent as noted in Staff's testimony related to the
22 Hydro Deferral.² It is also consistent with Staff's testimony in this proceeding

² *Wash. Util. & Transp. Comm'n v. PacifiCorp*, Docket UE 100749, Exhibit No.____(KHB-7TC), page 4, lines 13-16.

1 that an accounting petition is not required for the Commission to deal with REC
2 revenues or additional power costs related to the test period.³

3 **Q. Did the Company over-earn in 2009 and 2010?**

4 A. No. As I stated in my direct testimony, the Company's overall return on equity
5 during 2009 was 5.28 percent and for 2010 was 6.69 percent. No party has
6 contested these facts.

7 **Q. Have the parties presented any analysis of the financial consequences to the
8 Company of retroactively crediting 2009 and 2010 REC revenues to
9 customers in 2011, on top of 2011 forecast REC revenues?**

10 A. No. In fact, Staff's testimony is dismissive of the need to consider the financial
11 impact of its proposal on the Company. This is troubling given Staff's duty to
12 balance the interests of customers and shareholders. As discussed in the testimony
13 of Mr. Dalley, the proposals of Staff and ICNU/PC would reduce the Company's
14 earnings in the rate effective period of this proceeding by approximately [REDACTED]
15 [REDACTED]. While no party has considered or analyzed this impact, a rate change of
16 the magnitude proposed in this proceeding should not be ordered without full
17 consideration of the Company's earnings.

18 **Q. Please discuss your concerns regarding this proceeding's impact on future
19 settlement agreements.**

20 A. As I stated in my direct testimony, during the course of settlement negotiations in
21 Docket UE-090205, the parties proposed and the Company rejected the inclusion
22 of a REC revenue balancing account as part of that settlement. No party contests
23 this fact. Now, two years later, the Company is faced with a retroactive

³ *Id.* at page 14, lines 19-23.

1 imposition of a REC revenue balancing account without the ability to take any
2 actions with respect to the other elements of the Stipulation. To provide
3 perspective, the magnitude of Staff's and ICNU/PC's recommended credit to
4 customers in this proceeding exceeds the entire rate increase that was authorized
5 in the Stipulation in Docket UE-090205.

6 **Q. Is there an additional concern?**

7 A. Yes. Although Staff's testimony acknowledges that \$576,254 of Washington-
8 allocated REC revenue was included in the Company's filing in Docket UE-
9 080220 for the 12-months ending June 2008, it refuses to recognize this level in
10 its adjustment in this proceeding. This approach is inconsistent with the credit of
11 \$657,755 recognized in Staff's adjustment related to the forecast of 2010
12 Washington-allocated REC revenues included in rates in Docket UE-090205.

13 **Q. What is Staff's justification for this position?**

14 A. Staff justifies this unbalanced approach on the basis that the Stipulation in Docket
15 UE-080220 was a black box settlement. This approach attempts to further
16 penalize the Company for reaching settlement in a prior docket.

17 **Q. Please discuss your concerns with the ever-changing nature of Staff's
18 proposals in this docket.**

19 A. As discussed in detail in the rebuttal testimony of Mr. Dalley, Staff's position in
20 this case has been a moving target. In the first phase of this proceeding, Staff
21 accepted the allocation of revenues to Washington based on the method that has
22 been used since 2009 for reporting of REC revenues and for setting the REC
23 revenue forecast in rates.

1 In its May 24, 2011 pleading filed with the Commission, Staff proposed a
2 second approach, changing the allocation methodology to apply the methodology
3 that the Company developed in 2011 for a going-forward REC tracker
4 mechanism. This increases the Washington-allocated REC revenues for 2009 by
5 approximately [REDACTED] and for 2010 by approximately [REDACTED] as
6 compared to the method originally accepted and used by Staff.⁴

7 In its September 9, 2011 direct testimony, Staff proposes a third approach,
8 mixing and matching Staff's first two methods. Staff's latest approach actually
9 includes some REC revenues from RECs generated in 2008. Staff admits that this
10 is intentional and that the exclusion of 2008 REC revenues from its proposal in
11 May was "inadvertent". Staff's new proposal further increases the REC revenues
12 for 2009 by approximately [REDACTED] and for 2010 by approximately [REDACTED].⁵
13 In contrast, ICNU/PC's witness acknowledges that REC revenues from 2008
14 vintage RECs are not appropriately included in 2009 or 2010 REC revenues.

15 Staff offers no rationale for these changes. They appear to be designed to
16 produce the largest REC credit possible under the circumstances, or to punish the
17 Company, or both.

18 **Q. Is there also a moving target with respect to Staff's position on the tracking**
19 **mechanism?**

20 A. Yes. Only through discovery did the Company learn that Staff now contends that
21 the \$4.8 million currently being returned to customers is related to 2009 REC

⁴ 2010 amount reflects the variance between Washington's allocated share of 2010 booked revenues and the amount proposed by Staff in its May 24, 2011 filing.

⁵ 2010 variance reflects total Washington-allocated REC revenue prior to offset for amount included in rates.

1 revenues rather than related to forecast REC revenues for the rate effective period
2 beginning April 2011. As noted in my direct testimony, the REC revenue credit
3 in the balancing account is tied to the forecast of net power costs for the rate
4 effective period – April 3, 2011 through April 2, 2012. This is also noted in the
5 Order stating: “At the end of the rate year, PacifiCorp will be required to submit a
6 full accounting of REC proceeds actually received during the preceding 12
7 months.” (paragraph 205) Staff does not contest this statement in testimony, yet
8 its response to a Company data request surfaced this new position for the first
9 time. This new position is also in conflict with Staff’s own recommendation to
10 “change” the REC tracking mechanism from a forecast with true-up to a historical
11 mechanism. The Commission should not allow Staff to rely on this new argument
12 for an after-the-fact justification of the retroactive, triple-counting nature of its
13 proposal.

14 **Q. How did the Company implement the Commission’s Order 06?**

15 A. As noted above, the Company implemented the Commission’s Order to include
16 \$4.8 million in the original tracker related to the rate effective period. This is also
17 how the Company reflected the Order’s requirements on its financial books. This
18 interpretation is based on two key factors. First, as noted in the Company’s
19 testimony and briefs, the \$4.8 million was related to the level of forecast REC
20 revenues for the rate effective period beginning April 2011. Second, the
21 Commission’s ordering paragraph 205 states:

22 “At the end of the rate year, PacifiCorp will be required to submit a full
23 accounting of REC proceeds actually received during the preceding 12
24 months. This accounting will be considered in light of other information
25 to determine if the amount of credits that should have been returned to

1 customers exceeds or fall short of the estimated \$4.8 million upon which
2 the initial bill credits are based. In other words, the Commission will
3 authorize a true-up of the initial credits that can be reconciled as credits
4 are paid during the following 12 months.”
5

6 This indicates that there is to be a true-up from the \$4.8 million initial credit to the
7 amount actually received in the rate effective period. And, this forecast and true-
8 up method is envisioned to occur for all future periods.

9 **Q. Is there another area of disagreement among the parties as to the scope of**
10 **this proceeding?**

11 A. Yes. As noted in my direct testimony, the Company believes the Commission
12 limits the true-up of revenue to amounts received no earlier than January 1, 2010.

13 Paragraph 207 states:

14 “We require this detailed accounting, in part, considering the disputed
15 question of whether PacifiCorp should be required to include, in what we
16 here describe as a tracker account, REC proceeds received during the
17 periods after the test year, including those received during the pendency of
18 this proceeding. Staff proposed that REC proceeds received after January
19 1, 2010, be accounted for and established as a regulatory liability on the
20 Company’s books, the rate treatment of which could be determined in a
21 future proceeding. Another possible starting date for such an account
22 might be the date on which PacifiCorp made its initial filing in this
23 proceeding, which put the rate and accounting treatment of REC revenues
24 in issue. Other possible dates are conceivable, including the start of the
25 rate year. We do not finally resolve these questions in this Order. We
26 require additional briefing on the subject, and may require additional
27 evidence. We will establish process and schedule for this by subsequent
28 notice.”

29 In fact, while the Order explicitly states that the starting date of the REC tracker
30 could be later than January 1, 2010, nowhere does the Commission’s Order
31 suggest a start date prior to January 1, 2010. Yet both Staff and ICNU/PC
32 propose to apply the REC tracker to revenues received in 2009.

1 **Q. Does the Company agree with Staff's and ICNU/PC's proposal to change the**
2 **REC tracking mechanism?**

3 A. No. It is important to note that no party ever challenged the Company's forecasts
4 in 2009 and 2010 at the time they were reviewed in the general rate cases. Now,
5 Staff applies 20/20 hindsight to criticize the Company's forecast. Notably, no
6 party in this proceeding has taken issue with the Company's forecast for the rate
7 effective period that was provided to parties on May 24, 2011. Neither Staff nor
8 ICNU/PC discuss how the Company would transition from the current forecast
9 and true-up for the rate effective period to an historical approach. Given the lack
10 of discussion on this proposal in both Staff's and ICNU/PC's direct testimony,
11 there is no basis for changing the REC tracker as established by the Commission
12 in its Order.

13 **Q. Does the Company agree with Staff's and ICNU/PC's proposal to keep the**
14 **Schedule 95 rate the same irrespective of the outcome of his proceeding?**

15 A. No. Once again, Staff and ICNU/PC present no analysis or rationale for this
16 proposal. If the Commission decides to return REC revenues to customers for
17 prior periods, the Company sees no reason to delay for [REDACTED] the
18 return of revenues to customers. As discussed by Mr. Dalley, the Company is
19 required to record the full amount of any prior period adjustment in the financial
20 year when the liability is created. Spreading the return of revenues over [REDACTED]
21 [REDACTED] actually increases the financial burden on the Company.

1 **Q. Do Staff's and ICNU/PC's proposals threaten to increase the regulatory and**
2 **business challenges that the Company already faces in Washington?**

3 A. Yes. As compared to PacifiCorp's five other state regulatory environments,
4 Washington presents a unique set of challenges from the perspective of providing
5 the Company an opportunity to recover its costs and earn its authorized rate of
6 return. Factors contributing to these challenges include:

- 7 • Washington relies on a historic test period for setting rates, while the
8 majority of the Company's other states utilize some form of a future
9 test period for setting rates. Washington takes 11 months to process
10 rate cases, which is one of the longest statutory suspension periods
11 among the Company's jurisdictions. For this general rate case, the
12 combination of these two practices created a 15 month lag between the
13 end of the historic test period (2009) and the beginning of the rate
14 effective period (April 2011). In addition, the use of an average of
15 monthly averages for rate base means that the only assets that are
16 reflected in rates for a full year are those in rate base by December
17 2008, further increasing the under-recovery of costs.
- 18 • Washington is the Company's only jurisdiction without allocated
19 service territories. This means that the Company is constantly at risk
20 of losing customers and service territory to other consumer-owned
21 utilities whose policies and practices are not regulated by this
22 Commission.
- 23 • The Company's authorized return on equity, equity component and

1 return on rate base in Washington are currently the lowest of the
2 Company's six jurisdictions.

- 3 • The Company's other five jurisdictions use a common inter-
4 jurisdictional cost allocation methodology, one that this Commission
5 rejected. This increases the Company's risk of under-recovery of its
6 overall costs, creates a cost allocation methodology in Washington
7 disconnected from how the Company actually operates its system on a
8 six-state integrated basis, impedes adoption of a PCA, and impedes
9 inclusion of cash working capital costs in rates.

10 While each of these practices and decisions were determined to be reasonable in
11 isolation, collectively they create a business environment in Washington that is
12 extremely challenging, one that has contributed to the Company's chronic under-
13 earning in Washington. This makes the policy implications of this proceeding
14 that much more important.

15 **Q. Does this conclude your rebuttal testimony?**

16 A. Yes.