

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant,

vs.

PACIFICORP d.b.a. PACIFIC POWER,

Respondent.

**DOCKET UE-100749
PHASE 2**

**PACIFICORP'S
INITIAL POST-HEARING BRIEF
ON RATE TREATMENT FOR
RENEWABLE ENERGY CREDIT REVENUES**

REDACTED

November 4, 2011

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I. INTRODUCTION

1. The central issue presented in Phase 2 of this proceeding is whether the Washington Utilities and Transportation Commission (WUTC or Commission) can and should order a retroactive rate credit for actual and imputed revenues from PacifiCorp's 2009 and 2010 renewable energy credit (REC) sales. The Commission's laws, rules, and policies provide a list of reasons why the Commission should not do so, including the rule against retroactive ratemaking, the filed rate doctrine, the prohibition on collateral attacks, and the policy against single-issue ratemaking.
2. In addition, the Commission has recognized that it has discretion to determine the rate treatment of REC revenues taking into account equitable considerations, such as the need to encourage utilities to take actions that benefit both utility customers and shareholders. These equitable considerations, especially the fact that the Company did not earn its authorized returns in either 2009 or 2010 even taking into account increased REC revenues, support rejection of the retroactive adjustments and application of a REC tracking mechanism on a forward-looking basis only.
3. If the Commission approves a retroactive rate credit for REC revenues despite all of these factors, the Company requests that the Commission mitigate the negative impact of such an order by offsetting the rate credit with the increase in net power costs (NPC) during 2009 and 2010 associated with poor hydro conditions. The Company also urges the Commission to adopt the Company's approach to REC revenue allocation, which produces a balanced and fair result.
4. The rate order in Phase 1 of this case approved a revenue requirement increase of \$38 million, less \$4.8 million for the rate year (12 months ending March 2012) REC revenue

credit.¹ The Commission then clarified its order, reducing it by \$4.5 million to account for an error in the calculation of NPC in the order.² As the Company noted in its request for reconsideration, the change in tax treatment of the Chehalis regulatory asset in the order caused a further, unexpected \$5.4 million decrease to 2011 earnings.³ All of this reduced the effective rate increase in the case to \$23.3 million. If the Commission adopts the retroactive REC trackers proposed by other parties, the result will be to negate up to \$30 million of the ordered rate increase and leave only a small fraction of the Company's approved revenue requirement increase in place for the rate effective period. This will eliminate the Company's opportunity to earn its allowed rate of return in the rate effective period. Such an outcome will perpetuate and likely worsen the Company's chronic under earning in Washington. Such an outcome also cannot in any way be construed to result in rates that are fair, just and reasonable for the Company.

5. For all of these reasons, the Company respectfully requests that the Commission adopt its forward-looking REC tracking proposal and reject the other parties' retroactive REC tracking proposals.

II. BACKGROUND

6. The issues raised in this proceeding, Phase 2 of Docket UE-100749, span three separate PacifiCorp general rate cases (GRCs) between 2008 and 2011. The case also directly implicates two other cases involving REC revenues: *Re. Amended Petition of Puget Sound Energy, Inc. for an Order Authorizing the Use of the Proceeds from the Sale of Renewable Energy Credits and*

¹ *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Order 06 (Mar. 25, 2011) [hereinafter "Order 06"].

² *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Notice Responding to Informal Request for Clarification (Mar. 30, 2011).

³ *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Petition for Reconsideration ¶¶ 16, 23 (Apr. 4, 2011).

Carbon Financial Instruments, Docket UE-070725 (Puget REC case) and *Washington State Attorney General's Office and the Industrial Customers of Northwest Utilities v. PacifiCorp*, Docket UE-110070 (ICNU/PC REC Complaint).

A. PacifiCorp's 2008 GRC

7. PacifiCorp's 2008 GRC, Docket UE-080220, was filed on February 6, 2008, and used a 12-month historic test period ended June 2007.⁴ The Company forecast NPC for the 12 months ending June 2008; the Company forecast REC revenues of \$576,254 for that same period.⁵ This case was resolved by a Stipulation, to which Staff, Public Counsel, and the Industrial Customers of Northwest Utilities (ICNU) were all parties.⁶ The Commission adopted the Stipulation in Order 05, allowing the new rates to go into effect on October 15, 2008.⁷

8. The 2008 GRC Stipulation supported a revenue increase of \$20.4 million, slightly more than one-half of the Company's original filing.⁸ While the Stipulation did not specifically address the issue of REC revenues, by its terms the Stipulation settled and resolved all issues in the case.⁹

9. Three years later in this case, Staff and ICNU/Public Counsel (ICNU/PC) have proposed REC revenue credits for 2009 of [REDACTED] and [REDACTED], respectively, or approximately [REDACTED] of the rate increase approved in Order 05 in the 2008 GRC.¹⁰

10. PacifiCorp's return on equity during 2009 when the rates from the 2008 GRC were in effect was 5.28 percent.¹¹ At the time, the most recently authorized return on equity for PacifiCorp was 10.20 percent.¹²

⁴ *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket No. UE-080220, Application ¶ 6 (Feb. 6, 2008).

⁵ *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket No. UE-080220, Exh. No. RBD-4 at 3.5.1 (Mar. 4, 2008).

⁶ *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket No. UE-080220, Order 05 ¶ 1 (Oct. 8, 2008).

⁷ *Id.*

⁸ *Id.* ¶¶ 1-2.

⁹ *Id.* at Stipulation ¶ 28.

¹⁰ See Breda, Exh. No. KHB-7TC 2:19; Schoenbeck, Exh. No. DWS-5CT 2:6; *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket No. UE-080220, Order 05 ¶ 1 (Oct. 8, 2008).

B. PacifiCorp's 2009 GRC

11. PacifiCorp's 2009 GRC, Docket UE-090205, was filed on February 9, 2009, and used a historic test period of 12 months ended June 30, 2008.¹³ The Company forecast NPC for the 12 months ending December 2010; the Company forecast REC revenues of \$657,755 for the same period.¹⁴ This case was resolved by a Stipulation, to which Staff, Public Counsel, and ICNU were all parties.¹⁵ The Commission adopted the Stipulation in Order 09, allowing the new rates to go into effect on January 1, 2010.¹⁶
12. The 2009 Stipulation supported a revenue increase of \$13.5 million, approximately one-third of the Company's original filing.¹⁷ The Stipulation resolved all issues in the case, and specifically addressed REC revenues in two ways.¹⁸ First, the Company agreed to provide the parties detailed reports, tracking, and accounting for REC revenues.¹⁹
13. Second, the Stipulation provided that: "Nothing in this Stipulation limits or expands the ability of any Party to file for deferred accounting or request that the Commission take any other action regarding PacifiCorp's Washington-allocated RECs. For purposes of any such filing, the Parties agree that this case includes \$657,755 in Washington-allocated REC revenues for the 2010 rate effective period."²⁰ A balancing account for REC revenues was not included in the

¹¹ Dalley, Exh. No. RBD-25T 1:15-16.

¹² *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-061546, Order 08 ¶ 222 (June 21, 2007).

¹³ *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-090205, Application ¶ 6 (Feb. 9, 2009).

¹⁴ *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-090205, Exh. No. RBD-1T 8:17-19 (Feb. 9, 2009); *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-090205, Exh. No. RBD-3 at 3.7.1 (Feb. 9, 2009).

¹⁵ *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-090205, Order 09 ¶ 1 (Dec. 16, 2009).

¹⁶ *Id.*

¹⁷ *Id.* ¶¶ 1-2.

¹⁸ *Id.* at Stipulation ¶¶ 20-22, 29.

¹⁹ *Id.* ¶¶ 20-21.

²⁰ *Id.* ¶ 22.

Stipulation; such a condition would have been a material departure from the terms of the Stipulation.²¹

14. Some two years later in this case, Staff and ICNU/PC have proposed REC revenue credits for 2010 of [REDACTED] and [REDACTED], respectively, or approximately [REDACTED] of the rate increase approved in Order 09 in the 2009 GRC.²²

15. PacifiCorp's return on equity during 2010 when the rates from the 2009 GRC were in effect was 6.69 percent.²³ At the time, the most recently authorized return on equity for PacifiCorp was 10.20 percent.²⁴

C. PacifiCorp's 2010 GRC—Phase 1

16. Phase 1 of PacifiCorp's 2010 GRC, Docket UE-100749, was filed on May 4, 2010.²⁵ This case used a 12-month historic test period ended December 2009.²⁶ The Company forecast NPC for the 12 months ending March 2012;²⁷ in its rebuttal filing, the Company forecast REC revenues of \$4.8 million for that same period.²⁸

17. On March 25, 2011, the Commission issued Order 06 in Phase 1 of this docket.²⁹ The Commission limited its order to "only fundamental determinations concerning the treatment of REC proceeds," including: (1) adherence to Orders 03 through 06 in the Puget REC Case, which determined that REC benefits should go to all customers with responsibility to pay for the costs

²¹ Kelly, Exh. No. ALK-1T 7:21-23.

²² See Breda, Exh. No. KHB-7TC 2:19-20; Schoenbeck, Exh. No. DWS-5CT 2:6-7; *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-090205, Order 09 ¶ 1 (Dec. 16, 2009).

²³ Dalley, Exh. No. RBD-25T 1:15-16.

²⁴ See *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-080220, Order 05 ¶ 20, Stipulation at ¶ 18 (Oct. 8, 2005).

²⁵ *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Application (May 4, 2010).

²⁶ *Id.* ¶ 5.

²⁷ *Id.*

²⁸ Duvall, Exh. No. GND-5T 2:11-20; Dalley, Exh. No. RBD-4T 8:17-9:3.

²⁹ Order 06.

of the underlying renewable resources;³⁰ (2) directing the return of REC proceeds to customers in the form of bill credits identified separately on customers' monthly bills;³¹ and (3) establishing the REC credit for 2011 at \$4.8 million, subject to a true up against actual REC proceeds received in 2011.³²

18. The Commission found that the record was insufficient to resolve "the disputed question of whether PacifiCorp should be required to include, in what we here describe as a tracking account, REC proceeds received during periods after the test year, including those received during the pendency of this proceeding."³³ The Commission noted that possible start dates for the tracking account included Staff's proposal of January 1, 2010, the date on which PacifiCorp made its initial filing in this case (May 2010), or the start of the rate year (April 2011).³⁴

19. To assist in the resolution of this issue, the Commission required the Company to file within 60 days a proposal for operation of the tracking mechanism going forward.³⁵ The Commission also required PacifiCorp to account for REC proceeds received beginning January 1, 2009 (the beginning of the historic test year in this case) and continuing through the rate year (April 2, 2012).³⁶

D. Puget REC Case

20. The Commission's decision to establish a REC tracking account in this case was expressly based upon its orders in the Puget REC case.³⁷ In April 2007, Puget Sound Energy, Inc. (Puget) filed an accounting petition seeking to defer the proceeds of REC and carbon

³⁰ *Id.* ¶¶ 199, 202.

³¹ *Id.* ¶ 202.

³² *Id.* ¶¶ 204-205.

³³ *Id.* ¶ 207.

³⁴ *Id.*

³⁵ *Id.* ¶ 208.

³⁶ *Id.* ¶ 203.

³⁷ *Id.* ¶¶ 199-202.

financial instruments (CFI) sales.³⁸ In October 2009, Puget amended this petition seeking to allocate revenues to assign portions to shareholders (associated with liabilities arising from the energy crisis) and for low-income energy needs.³⁹ Puget argued that it received a premium on certain California REC sales associated with settling energy crisis-related litigation with the California investor-owned utilities.⁴⁰

21. In response, ICNU witness Donald Schoenbeck filed testimony in January 2010 pointing to two resolutions by the California Public Utilities Commission (CPUC) related to the Puget contracts that stated, “Both resolutions note the contract price is reasonable as compared to the respective utility’s 2008 renewable solicitation.”⁴¹ Mr. Schoenbeck further pointed to PacifiCorp’s comparable California REC sales.⁴² Specifically, Mr. Schoenbeck noted that, in July 2009, Southern California Edison (SCE) had sought CPUC approval of a REC contract with PacifiCorp that was similar to the Puget REC contracts.⁴³ Mr. Schoenbeck included the CPUC resolutions on the PacifiCorp/SCE REC contract as exhibits to his testimony.⁴⁴ These exhibits clearly state that the contract anticipated the following volumes of sales from specific PacifiCorp facilities, including Marengo, Marengo II, and Rolling Hills: 110 GWH in 2009, 328 GWH in 2010 and 2011, and 329 GWH in 2012.⁴⁵ The resolution also contains the same conclusion as the Puget resolution that the contract price is reasonable compared to SCE’s 2008 renewable solicitation.⁴⁶ In its trial brief, ICNU further argued that the facts and findings of Puget’s case “parallel other recent CPUC proceedings. In 2009, SCE filed for approval of REC sales

³⁸ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy Co.*, Docket UE-070725, Order 03 ¶ 6 (May 20, 2010).

³⁹ *Id.*

⁴⁰ *Id.* ¶ 21.

⁴¹ Exh. No. DWS-7 10:1-2.

⁴² *Id.* at 10:7-11.

⁴³ *Id.*

⁴⁴ *Id.* at 10:7-11, 14-65.

⁴⁵ *Id.* at 28.

⁴⁶ *Id.* at 60.

contracts executed with PacifiCorp. The CPUC approved the SCE-PacifiCorp prices as reasonable.”⁴⁷

22. Another party to the Puget REC case, The Kroger Co. (Kroger), filed testimony citing the treatment of PacifiCorp’s RECs in Utah and Wyoming as support for an approach that allocated 100 percent of RECs to customers.⁴⁸ Public Counsel cited PacifiCorp’s REC reporting requirements from the 2009 GRC Stipulation and suggested similar requirements for Puget.⁴⁹ From this testimony, it is clear that parties to the Puget REC case understood that PacifiCorp was actively engaged in the REC markets and had entered into contracts that were very similar to the Puget contracts in question.

23. While Puget’s REC deferral petition was pending, Public Counsel and Kroger attempted to bring the REC sales issue into Puget’s GRC.⁵⁰ Public Counsel argued in the GRC that “REC revenue issues are directly related to the proper analysis of power costs in this case . . . [W]hen wind generation costs are included in the power costs sought to be recovered, proper ratemaking principles require that revenues derived from the related RECs must also be considered. . . . Failure to take these known and measurable revenues into account would be a violation of the matching principle.”⁵¹ The Commission acknowledged the merit of Public Counsel’s argument, but granted the motion to strike, finding that the pendency of the deferred accounting docket on RECs ensured against harm to customers.⁵²

24. On May 20, 2010, the Commission issued Order 03 in the Puget REC case, deciding that Puget’s customers should share REC revenues on the same basis as the Commission allocates the

⁴⁷ Exh. No. DWS-9 ¶ 39 (footnotes omitted).

⁴⁸ Exh. No. DWS-12 8:1-11.

⁴⁹ Exh. No. DWS-11 ¶ 55.

⁵⁰ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy Co.*, Dockets UE-090704 and UG-090705, Order 10 ¶ 3 (Jan. 8, 2010).

⁵¹ *Id.* ¶ 7 (quoting Public Counsel’s Response to Motion to Strike).

⁵² *Id.* ¶¶ 8-11.

costs of renewable resources in rates.⁵³ The Commission determined that Puget sold its RECs at a premium and permitted Puget to retain 50 percent of the net premium.⁵⁴ The Commission noted that its decision was a function of the “unique” situation caused by “evolving REC markets,” and explained: “We exercise our discretion to allow PSE to retain a portion of [the premium], in part, because we have recognized previously the importance of utilities pursuing strategies that benefit both shareholders and ratepayers, and we again do so here.”⁵⁵

25. The implementation of Order 03 proved challenging, and “it was not until Commission action on petition for reconsideration and on a joint proposal by the parties expressly invited by the Commission, that these questions were fully resolved.”⁵⁶ The final order in the Puget REC case, Order 06, was issued on October 26, 2010.⁵⁷

26. Because Puget filed for deferred accounting and the Commission declined to consider REC revenues in Puget’s GRC and include them in base rates, the Puget REC case did not invoke retroactive ratemaking, a violation of the filed rate doctrine, or the other legal issues present in this case.

E. ICNU/PC REC Complaint

27. In January 2011, ICNU and Public Counsel jointly filed a complaint against PacifiCorp, seeking to set aside the provisions of the 2009 GRC Stipulation relating to REC revenues on the basis that PacifiCorp misled them on this issue.⁵⁸ ICNU/PC sought to recover PacifiCorp’s

⁵³ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy Co.*, Docket UE-070725, Order 03 ¶ 84 (May 20, 2010).

⁵⁴ *Id.* ¶¶ 46-47.

⁵⁵ *Id.* n.56.

⁵⁶ Order 06 ¶ 200 (footnotes omitted).

⁵⁷ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy Co.*, Docket UE-070725, Order 06 (Oct. 26, 2010).

⁵⁸ Exh. No. DWS-13.

actual REC revenues for 2010 and asked the Commission to establish an ongoing REC revenue balancing account.⁵⁹

28. PacifiCorp moved to dismiss the complaint on various grounds, including the six-month statute of limitations.⁶⁰ In response, ICNU/PC claimed that they were unaware that PacifiCorp's actual REC revenues were significantly higher than forecast in the 2009 GRC until July 2010 when they received copies of PacifiCorp's California REC sales contracts.⁶¹ Disturbingly, in the ICNU/PC REC Complaint case, no party (ICNU, Public Counsel, or Staff) informed PacifiCorp or the Commission that, in January 2010, ICNU had actually included the CPUC resolutions associated with PacifiCorp's California REC contract as an exhibit to ICNU's testimony in the Puget REC case.⁶² This was six months prior to the "discovery" date ICNU/PC averred in the ICNU/PC REC complaint case. As noted above, ICNU relied upon the PacifiCorp REC sale to attempt to prove that Puget did not sell its RECs at a premium.⁶³

29. The Administrative Law Judge (ALJ) dismissed the ICNU/PC REC Complaint, noting several legal and policy impediments: (1) ICNU/PC's claims were barred by the statute of limitations which began to run at least by the May 2010 filing date of the 2010 GRC; (2) ICNU/PC's request to amend the 2009 GRC Order to reflect actual 2010 REC revenues was improper because the Commission "cannot legally establish retroactive rates;" (3) reopening the 2009 GRC to allow ICNU/PC to relitigate the REC issues would be an improper collateral attack on the 2009 GRC final order; and (4) the policy against single issue ratemaking precluded ICNU/PC from changing the outcome on one issue in the 2009 GRC Stipulation, but leaving the

⁵⁹ *Id.* ¶ 25.

⁶⁰ Exh. No. DWS-15 ¶¶ 30-41.

⁶¹ Exh. No. DWS-16 ¶ 19.

⁶² *See* Exh. No. DWS-7 14-65.

⁶³ Exh. No. DWS-9 ¶ 39.

rest of the Stipulation undisturbed.⁶⁴ Put another way, the ALJ reasoned that “the Commission cannot hold the Company to the bargain it made with all of the parties in [the 2009 GRC], reopen the matter to litigation and reduce the agreed upon revenue requirement, and enforce an order producing such a result.”⁶⁵

30. In dismissing the complaint, the ALJ helped clarify the scope of this Phase 2 proceeding, noting that “[t]he question remains open in [the 2010 GRC] whether the REC credits ultimately ordered in that proceeding will include all or part of the REC revenues PacifiCorp received during 2010, which are the principle revenues with which the Complaint is concerned.”⁶⁶

III. OUTLINE OF PARTIES’ REC TRACKER PROPOSALS

31. On May 24, 2011, PacifiCorp and Staff filed proposals for operation of the REC tracking mechanism going forward, as contemplated by Paragraph 208 of Order 06. ICNU/PC included their REC tracker proposal in their testimony filed in September 2011. PacifiCorp’s compliance filing included the detailed accounting of actual REC proceeds for calendar years 2009 and 2010 and an updated forecast of REC revenues from January 1, 2011 through March 31, 2012.⁶⁷

A. PacifiCorp’s REC Tracker Proposal

32. The Company’s proposed REC tracking mechanism operates on a forward-looking basis only, beginning with the April 2011 rate effective date for new rates in this case.⁶⁸ Consistent

⁶⁴ *Wash. State Attorney Gen.’s Office and the Industrial Customers of Northwest Utilities v. PacifiCorp*, Docket UE-110070, Order 1, Administrative Law Judge’s Initial Order Dismissing Complaint ¶¶ 33, 35, 41-43 (Apr. 27, 2011) [hereinafter “Administrative Law Judge’s Initial Order”]. On May 26, 2011, the Commission issued a Notice of Finality with respect to the Initial Order Dismissing Complaint. The Notice of Finality stated that no party petitioned for administrative review of the initial order and the Commission did not give notice of its intention to review the order on its own motion, so the order became final on May 25, 2011 by operation of law. The Notice of Finality also stated that the Commission does not endorse the order’s reasoning and conclusions, and if cited in the future, the order must be identified as an ALJ’s order. PacifiCorp is citing the Initial Order as such in this brief.

⁶⁵ Administrative Law Judge’s Initial Order ¶ 42.

⁶⁶ *Id.* ¶ 8.

⁶⁷ *Wash. Utils. & Transp. Comm’n v. PacifiCorp*, Docket UE-100749, PacifiCorp’s Compliance Filing (May 24, 2011). The rate effective period ends on April 2, 2012, but for practical reasons the Company rounded the forecast to the end of March 2012. *Id.*

⁶⁸ Kelly, Exh. No. ALK-1T 3:19-25.

with Order 06, PacifiCorp's proposed mechanism trues up the \$4.8 million included in base rates to actual REC revenues received in the rate effective period.⁶⁹ Although Order 06 contemplated a mechanism tied to the April 3, 2011-April 2, 2012 rate effective period, PacifiCorp proposed that the true up be based on a calendar year beginning in 2012.⁷⁰

33. If the Commission accepts this proposal, PacifiCorp will submit a full accounting of REC revenues actually received from April 1, 2011 through December 31, 2011 by May 1, 2012.⁷¹ The Company will also provide an estimate of the REC proceeds it expects to receive from January 1, 2012 to December 31, 2012.⁷² In subsequent years, the Company will continue to provide this information for the full calendar year.⁷³ Any positive or negative balance in the REC tracker will accrue interest at the Company's weighted average cost of capital.⁷⁴ The Company will file an advice letter on May 1 of each year to increase or decrease the REC credit in Schedule 95 to reflect the true up of actual REC revenues received and those included in rates during the historic period and the estimate of future proceeds.⁷⁵

34. PacifiCorp also proposed a calculation to determine how to allocate RECs and REC revenues to Washington. The Company's allocation method ensures that the Company does not over-allocate RECs, which would result in a double-counting of RECs that is prohibited under state RPS requirements.⁷⁶ In the past, the Company allocated REC revenues to Washington using the Control Area Generation West (CAGW) allocation percentage to REC revenues

⁶⁹ Dalley, Exh. No. RBD-25T 6:25-7:8.

⁷⁰ *Id.* at 6:21-24. ICNU/PC agree to have the accounting be based on a calendar year rather than the rate year. Schoenbeck, Exh. No. DWS-5CT 8:5-6. Staff also appears to agree with PacifiCorp's proposal. *See* Breda, Exh. No. KHB-7TC 10:11-15.

⁷¹ Dalley, Exh. No. RBD-25T 6:27-28.

⁷² *Id.* at 7:3-5.

⁷³ *Id.* at 6:27-7:2.

⁷⁴ *Id.* at 7:6-8.

⁷⁵ *Id.* at 7:9-14.

⁷⁶ *Id.* at 7:22-8:4.

booked from the sale of RECs from west control area resources.⁷⁷ This allocation methodology was used in the Company's 2009 and 2010 Commission Basis Reports and its Quarterly REC Revenue Reports provided to Staff and ICNU/PC.⁷⁸ No party challenged the allocation methodology prior to this phase of the docket.⁷⁹ Staff also supported this methodology in Phase 1 of this docket.⁸⁰ The 2009 and 2010 REC revenues reported in the Company's compliance filing in this docket reflect this methodology.⁸¹

35. Beginning in 2011, fewer Washington-allocated RECs will be available for sale because the Company will hold RECs for Washington RPS compliance.⁸² Holding RECs for Washington RPS compliance also requires a modification to the allocation methodology to account for these RECs.⁸³ This methodology calculates Washington's share of REC revenue by first subtracting eligible RECs necessary to satisfy Washington's RPS from the total RECs allocated to Washington using the CAGW factor, which results in the Washington-allocated RECs in excess of RPS compliance.⁸⁴ This amount is multiplied by the percentage of RECs the Company was able to sell, which results in the number of excess Washington RECs sold.⁸⁵ This amount is multiplied by the average price per REC to determine Washington's total REC revenue.⁸⁶ This calculation is performed separately for Washington RPS eligible and Washington RPS non-eligible RECs.⁸⁷

⁷⁷ Dalley, Exh. No. RBD-28CT 6:14-21.

⁷⁸ *Id.* at 7:12-18.

⁷⁹ *Id.* at 7:12-21.

⁸⁰ *Id.* at 7:21.

⁸¹ *Id.* at 6:14-21.

⁸² Dalley, Exh. No. RBD-25T 7:15-19.

⁸³ Dalley, Exh. No. RBD-28CT 10:3-10.

⁸⁴ *Id.* at 10:11-16.

⁸⁵ *Id.* at 10:16-18.

⁸⁶ *Id.* at 10:18-20.

⁸⁷ *Id.* at 10:20-21.

B. Staff's and ICNU/PC's REC Tracker Proposals

36. Both Staff and ICNU/PC propose REC tracker mechanisms with rate credits for RECs both on a forward-looking basis (for REC revenues in the rate effective period) and a backward-looking basis (for REC revenues in 2009 and 2010).⁸⁸

1. Staff's REC Tracker Proposal

37. Staff's proposal has changed in each successive filing on REC revenues, each time increasing the amount of REC revenues at issue. In Phase 1 of this proceeding, Staff accepted the Company's methodology for allocating REC revenues to Washington that has been used in previous filings.⁸⁹ This methodology allocated REC revenues to Washington using the CAGW allocation percentage to REC revenues booked from the sale of RECs from west control area resources.⁹⁰

38. In Staff's proposal filed on May 24, 2011, Staff proposed a new allocation approach.⁹¹ Staff's new approach applied a going-forward methodology similar to the methodology developed by the Company for REC revenues beginning with the rate effective period on a retroactive basis to 2009 and 2010 REC revenues.⁹² Staff stated that the basis for this revised methodology was to add an additional share of revenues associated with RECs held for compliance in Oregon and California.⁹³ This new approach increased Washington-allocated REC revenues for 2009 by approximately [REDACTED] and for 2010 by approximately \$ [REDACTED] [REDACTED] compared with the method originally accepted and used by Staff.⁹⁴ Based on this methodology, Staff proposed crediting customers \$ [REDACTED] for 2009 REC revenues and

⁸⁸ *Id.* at 4:17-21.

⁸⁹ Kelly, Exh. No. ALK-2CT 7:17-23.

⁹⁰ Dalley, Exh. No. RBD-28CT 6:14-21.

⁹¹ Kelly, Exh. No. ALK-2CT 8:1-6.

⁹² *Id.* at 8:1-6; Dalley, Exh. No. RBD-28CT 13:4-10.

⁹³ Breda, Exh. No. KHB-7TC 8:9-15.

⁹⁴ Kelly, Exh. No. ALK-2CT 8:4-6.

\$ [REDACTED] for 2010 REC revenues.⁹⁵

39. Then, in direct testimony in this phase of the proceeding, Staff proposed a third allocation approach.⁹⁶ Staff's third approach relies on revenues booked in 2009 and 2010, rather than revenues associated with RECs generated in those years, so Staff's new calculation includes revenues from RECs generated in 2008.⁹⁷

40. This second change to Staff's allocation approach further increased Washington-allocated REC revenues, by approximately [REDACTED] for 2009 and approximately [REDACTED] for 2010.⁹⁸ Staff included an offset of \$657,755 to 2010 REC revenues to reflect the REC baseline adopted in PacifiCorp's 2009 GRC.⁹⁹ Staff did not, however, offset 2009 REC revenues for amounts included in rates from PacifiCorp's 2008 GRC.¹⁰⁰ Staff's latest proposal is to credit customers [REDACTED] in 2009 REC revenues and [REDACTED] in 2010 REC revenues, for a total revenue credit of [REDACTED].¹⁰¹

41. Staff proposed using the tracking mechanism established by the Commission in this proceeding to return the 2009 and 2010 revenues to customers.¹⁰² Staff proposed to change the REC tracker on a prospective basis from one based on a forecast and true up, as ordered by the Commission, to one where the revenue included in the tracking mechanism be based on actual REC revenue.¹⁰³ Staff also proposed that the tariff rate should remain the same until the

⁹⁵ *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Commission Staff's Approach for Allocating RECs at Attachment A (May 24, 2011).

⁹⁶ Kelly, Exh. No. ALK-2CT 8:7-14.

⁹⁷ *Id.* at 8:7-14; Dalley, Exh. No. RBD-28CT 13:4-10.

⁹⁸ Kelly, Exh. No. ALK-2CT 8:11-14.

⁹⁹ Breda, Exh. No. KHB-7TC 6:23-24.

¹⁰⁰ Kelly, Exh. No. ALK-2CT 7:6-16.

¹⁰¹ Breda, Exh. No. KHB-7TC 2:14-20.

¹⁰² *Id.* at 3:1-7.

¹⁰³ *Id.* at 3:1-7.

balancing account is exhausted or until ongoing REC sales indicate a different credit rate is appropriate.¹⁰⁴

2. ICNU/PC's REC Tracker Proposal

42. ICNU/PC's proposal is generally consistent with Staff's proposal.¹⁰⁵ Staff summarized the three differences between the proposals of Staff and ICNU/PC.¹⁰⁶ First, ICNU/PC does not credit REC revenues for 2010 with the \$657,755 REC baseline established in PacifiCorp's 2009 GRC.¹⁰⁷ Second, ICNU/PC's calculation recognizes REC revenues based on the date the RECs were generated, whereas Staff's calculation recognizes them when PacifiCorp realized the revenue associated with the RECs.¹⁰⁸ Third, in allocating REC revenues to Washington, ICNU/PC assumed that PacifiCorp would have sold 100 percent of the RECs allocated to Washington, whereas Staff assumed PacifiCorp would have sold the same ratio it had actually sold in the past.¹⁰⁹ ICNU's calculations result in [REDACTED] in REC revenues for 2009 and [REDACTED] for 2010, for a total revenue credit of [REDACTED].

3. PacifiCorp's Response to Staff's and ICNU/PC's REC Tracker Proposals

43. PacifiCorp filed rebuttal testimony in response to Staff's and ICNU/PC's testimony. In addition to objecting to retroactive recovery of REC revenues received in 2009 and 2010, the Company's testimony outlined its objections to specific elements of other parties' proposals. First, PacifiCorp objected to Staff's retroactive changes to the allocation of 2009 and 2010 REC revenues.¹¹⁰ Second, PacifiCorp argued that Staff's 2009 REC revenues should be offset by the

¹⁰⁴ *Id.* at 3:1-7.

¹⁰⁵ Breda, Exh. No. KHB-9TC 2:1-4.

¹⁰⁶ *Id.* at 2:5-6.

¹⁰⁷ *Id.* at 2:7-9.

¹⁰⁸ *Id.* at 2:12-14.

¹⁰⁹ *Id.* at 3:11-22.

¹¹⁰ Dalley, Exh. No. RBD-28CT 11 3:14.

\$576,254 of REC revenues included in the Company's 2008 GRC.¹¹¹ Third, PacifiCorp objected to Staff's and ICNU/PC's proposals to maintain the same Schedule 95 rate regardless of the outcome of this proceeding.¹¹² Finally, PacifiCorp explained the corrections that would be required to make Staff's and ICNU/PC's allocation calculations accurate.¹¹³ Correcting the allocation errors in their calculations would result in 2009 REC revenues of [REDACTED] and 2010 REC revenues of [REDACTED], for a total revenue credit of [REDACTED].¹¹⁴ PacifiCorp also noted that if the Commission commenced the REC tracker on the date of the filing of the 2010 GRC, this would result in a REC revenue credit of approximately [REDACTED].¹¹⁵

IV. DISCUSSION

A. **Washington Law and Policy Support PacifiCorp's REC Tracker Proposal and Prohibit Staff's and ICNU/PC's REC Tracker Proposals.**

44. PacifiCorp's REC tracker proposal begins on the effective date for rates in the 2010 GRC and operates on a prospective basis, consistent with Washington law and policy. In contrast, Staff's and ICNU/PC's REC tracker proposals apply retroactively and implicate a host of legal and policy impediments.

1. **The Puget REC Order Applies to PacifiCorp on a Prospective Basis Only, Does Not Support Staff's and ICNU/PC's Proposed Retroactive Trackers of REC Revenues, and Demonstrates the Exercise of Commission Discretion in Allocating REC Revenues.**

45. In Order 06, the Commission decided to adhere to the basic principles discussed in the Puget REC order requiring that proceeds derived from the sale of RECs be returned to

¹¹¹ Kelly, Exh. No. ALK-2CT 7:6-16.

¹¹² *Id.* at 11:13-21.

¹¹³ Dalley, Exh. No. RBD-28CT 14-20.

¹¹⁴ *Id.* at 16:7-13; 20:11-18.

¹¹⁵ *Id.* at 6:5-7.

customers.¹¹⁶ The Commission noted that it addressed the issue of RECs for the first time in the Puget REC order, decided less than one year prior to Order 06.¹¹⁷

46. There are three key limitations on the application of the Puget REC order to this case. First, because the Puget REC case resulted from an accounting petition filed by Puget and REC revenues were not included in Puget's base rates, the Puget REC case did not involve nor is it precedent on the major issues raised in this case, including retroactive ratemaking, filed rate doctrine, impermissible collateral attack, and single issue ratemaking.
47. Second, the Puget REC order was one of first impression and the decision expressly noted that the factual context was "unique and non-recurring."¹¹⁸ In these circumstances, fairness requires that the Commission apply the Puget REC order to PacifiCorp on a prospective basis only (*i.e.* the approach proposed in PacifiCorp's REC tracker proposal).¹¹⁹ In any event, the Puget REC order does not provide any authority for crediting PacifiCorp REC revenues that accrued prior to the date of that order (Order 03 was issued on May 20, 2010; the final order in the case, Order 06, was issued on October 26, 2010.)
48. Third, the Commission ruled in the Puget REC order that it has the discretion to determine ratemaking treatment for REC proceeds, taking into account equitable

¹¹⁶ Order 06 ¶ 202.

¹¹⁷ *Id.* ¶ 199.

¹¹⁸ *Id.*; *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy Co.*, Docket UE-070725, Order 03 n.56 (May 20, 2010).

¹¹⁹ *See U.S. West Comm. Inc. v. Wash. Utils. & Transp. Comm'n*, 134 Wash.2d 48, 52 (1997) (affirming Commission decision to apply methodology change on a prospective basis only); *S.E.C. v. Chenery Corp.*, 332 U.S. 194, 203 (1947) (retroactive application of new agency adjudication permissible, but "must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles."); *Champagne v. Thurston Cty.* 163 Wash.2d 69, 79 (2008) (Generally, we presume prospective application of newly amended administrative regulations, particularly where the amendments change substantive rights.). *See also Letourneau v. Dep't of Licensing*, 131 Wash.App. 657, 665–66, 128 P.3d 647 (2006) (considering retroactive application of WAC rule based on whether: (1) the agency intended the amendment to apply retroactively, (2) the effect of the amendment is remedial or curative, or (3) the amendment serves to clarify the purpose of the existing rule.).

considerations.¹²⁰ A factor the Commission expressly cited in exercising this discretion is whether it supports utilities pursuing strategies that benefit both shareholders and ratepayers.¹²¹ The record in this case demonstrates that a REC tracking mechanism that allows retroactive REC credits is decidedly unsupportive of PacifiCorp's efforts to reduce its overall costs for both customers and shareholders by actively participating in the REC markets. The prospect of retroactively crediting REC revenues introduces significant risks, creates an unpredictable regulatory environment for the Company, and discourages future actions by the Company to take the initiative to improve its earnings.¹²² In addition, the record demonstrates that the pricing of the Puget contracts for which Puget was awarded a premium are comparable to the pricing of the PacifiCorp contracts, when compared against the SCE 2008 competitive solicitation.

49. The REC revenues PacifiCorp received in 2009 and 2010 mitigated PacifiCorp's significant under earnings in those years and helped balance the Company's under recovery of generation and power costs, including costs associated with poor hydro conditions. No party contests the fact that PacifiCorp's 2009 and 2010 returns on equity (ROE) were significantly below the ROE authorized by the Commission for those periods and in this docket.¹²³ The Company's Washington returns in 2009 and 2010 were 5.28 percent and 6.69 percent respectively,¹²⁴ including the impact of REC revenues.¹²⁵ The fact that the Company's ROEs during these years were far below that which was authorized—10.20 percent—while taking into account the REC revenues indicates that the Company's rates in total were just and reasonable.

¹²⁰ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy Co.*, Docket UE-070725, Order 03 ¶ 47 (May 20, 2010).

¹²¹ *Id.* at ¶¶ 41, 47 n.56.

¹²² Kelly Exh. No. ALK-1T 4:14-17.

¹²³ Dalley, Exh. No. RBD-25T 1:13-18.

¹²⁴ *Id.*

¹²⁵ *Id.* at 1:19-20.

50. Requiring the Company to return 2009 and 2010 REC revenues to customers would eliminate the Company's opportunity to earn its authorized rate of return in 2011.¹²⁶ Staff's and ICNU/PC's proposals would reduce the Company's Washington ROE by [REDACTED].¹²⁷ Furthermore, since the REC revenues for 2009 and 2010 are associated with prior fiscal periods, the Company would be required to book the accounting entries immediately per Financial Accounting Standards Board Accounting Standards Codification Topic 980 Regulated Operations.¹²⁸ As a result, a retroactive credit for REC revenues in 2009 or 2010 would result in a significant one-time adjustment to the Company's 2011 Washington earnings. This potential reduction to earnings would be in addition to the unexpected reduction in 2011 earnings of \$5.4 million associated with the Commission ordered change in tax treatment of the Chehalis regulatory asset in Phase 1 of this case.¹²⁹

51. Staff claims that the Commission should order retroactive REC credits regardless of the impact on the Company's earnings.¹³⁰ However, whenever the Commission sets rates, it must ensure that the rates include compensation necessary to provide safe and reliable electric service¹³¹ and "a rate of return sufficient to maintain its financial integrity, attract capital on reasonable terms, receive a return comparable to other enterprises of corresponding risk,"¹³² and maintain the utility's creditworthiness.¹³³ The Washington Supreme Court has also noted that a basic function of the Commission is to "not only assure fair prices and service to customers, but

¹²⁶ Dalley, Exh. No. RBD-28CT 3:14-21.

¹²⁷ *Id.* at 3:1-2.

¹²⁸ *Id.* at 3: 5-9.

¹²⁹ *Id.* at 3: 5-13

¹³⁰ Breda, Exh. No. KHB-7TC 13:7-12.

¹³¹ RCW 80.28.010.

¹³² *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Docket Nos. UE-991606, *et al.*, 3rd Supp. Order ¶ 324 (2000); *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-050684, Order 04 ¶ 235 (Apr. 17, 2006).

¹³³ *See Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

also to assure that regulated utilities earn enough to remain in business—and each of which functions is as important in the eyes of the law as the other.”¹³⁴

52. While the Commission has discretion on how to treat REC revenues in rates, this discretion is limited by the Commission’s obligation to ensure that the rates it orders are sufficient and provide the Company the opportunity to earn its approved rate of return. The Commission must also comply with the applicable laws and policies discussed below.

2. The Rule Against Retroactive Ratemaking Prohibits Including REC Revenues Received in the Past in Future Rates.

53. Both Staff’s and ICNU/PC’s proposals seek to credit customers for REC revenues received by the Company in 2009 and 2010, on top of the \$4.8 million of REC revenues currently reflected in rates for the rate effective period.

54. PacifiCorp’s current REC revenue credit was based on a forecast for the rate effective period (the period beginning April 3, 2011).¹³⁵ As Mr. Duvall explained, the Company projected REC revenues to match the NPC forecast period.¹³⁶ Similarly, Mr. Dalley testified at hearing that RECs are included in this case on a forward-looking basis for the twelve months ending March 2012, consistent with NPC.¹³⁷ The Commission explained in Order 06 that it has modified “the historical test year approach to recognize that, for certain expenses such as the costs the Company incurs to generate electricity, or ‘net power costs,’ a forward looking approach is more appropriate.”¹³⁸

55. The Commission adopted PacifiCorp’s REC forecast for 2011, stating that “we will accept for purposes of establishing 2011 credits the amount of REC revenues to which Staff and

¹³⁴ *People’s Org. for Wash. Energy Res. v. Wash. Utils. & Transp. Comm’n*, 104 Wn.2d 798, 808 (1985) (en banc).

¹³⁵ Duvall, Exh. No. GND-5T 3:20-4:4.

¹³⁶ *Id.* at 2:11-20.

¹³⁷ Dalley, TR. 370:5-13.

¹³⁸ Order 06 ¶ 13.

PacifiCorp agree, approximately \$4.8 million.”¹³⁹ The Commission stated that at the end of the rate year, PacifiCorp will be required to provide an estimate of the REC proceeds it expects in the following twelve months, and this amount will be trued up to REC proceeds actually received during that period.¹⁴⁰

56. The 2008, 2009, and 2010 GRCs forecast REC revenue levels in rates covering the time period of October 15, 2008 (the rate effective date of the 2008 GRC) to the present. Staff’s and ICNU/PC’s proposals to recalculate the REC revenue levels for the historic 2009 and 2010 periods based upon actual and imputed results constitute illegal retroactive ratemaking.

a. The Rule Against Retroactive Ratemaking Applies in this Case.

57. The Commission sets rates on a prospective basis only.¹⁴¹ The Commission adheres to the doctrine against retroactive ratemaking,¹⁴² which “prohibits the Commission from authorizing or requiring a utility to adjust current rates to make up for past errors in projections.”¹⁴³ The Commission has previously stated that “retroactive ratemaking . . . is extremely poor public policy and is illegal under the statutes of Washington State as a rate applied to a service without prior notice and review.”¹⁴⁴

¹³⁹ *Id.* ¶ 204.

¹⁴⁰ *Id.* ¶¶ 205, 206.

¹⁴¹ *Id.* ¶ 12 (in rate case, Commission determines the Company’s prudently incurred expenses and allows recovery of those expenses prospectively in rates.)

¹⁴² The Commission’s statutes require that if the Commission determines that rates are unjust or unreasonable, it shall determine just and reasonable rates “to be thereafter observed and in force.” RCW 80.28.020.

¹⁴³ *Re Application of Puget Sound Energy for Authorization Regarding the Deferral of the Net Impact of the Conservation Incentive Credit Program*, Docket UE-010410, Order (Nov. 9, 2001) Denying Petition to Amend Accounting Order (Nov. 9, 2001).

¹⁴⁴ *Id.*; see also RCW 80.28.020. The Commission denied Puget’s petition on the basis that the “retroactive ratemaking doctrine prohibits the Commission from authorizing or requiring a utility to adjust current rates to make up for past errors in projections. With few exceptions (not applicable here), under RCW 80.28.020, the Commission is charged with setting rates on a prospective basis.”

58. Staff's and ICNU/PC's proposals constitute illegal retroactive ratemaking. The proposals seek to adjust current rates to make up for incorrect projections of REC revenues in 2009 and 2010 by adjusting future rates.
59. The Commission recently evaluated retroactive ratemaking in the specific context of PacifiCorp's REC revenues the ICNU/PC REC Complaint.¹⁴⁵ In the Initial Order dismissing the complaint, the ALJ declined to amend the final order in the 2009 GRC, in part because "[t]he Commission is empowered to change currently effective rates upon a proper showing but must establish any revised rates for *prospective* application."¹⁴⁶ The Commission's rule on retroactive ratemaking was made clear in that order: "The Commission cannot legally establish retroactive rates."¹⁴⁷
60. In another case involving revenue projections in rates, US West Communications, Inc. (US West) filed a motion for reconsideration of a Commission order and specifically "requested permission to approach the Commission at a later date to increase revenues if Directory Assistance revenue estimates used in this proceeding are not met."¹⁴⁸ Public Counsel and Staff objected to US West's request: "Public Counsel calls this request a proposal for retroactive and single issue ratemaking. Commission Staff calls it piecemeal relief. If accepted, Public Counsel contends, any party would be free to reopen a case to show that any estimated revenues failed to meet expectations."¹⁴⁹
61. The Commission agreed with Public Counsel and Staff: "Every rate case is a composite of estimates calculated from past experience and the application of sound judgment. An order

¹⁴⁵ Administrative Law Judge's Initial Order ¶ 35.

¹⁴⁶ *Id.* ¶ 35 (emphasis in original).

¹⁴⁷ *Id.*

¹⁴⁸ *Wash. Util. and Transp. Comm'n v. US West Communications*, Docket UT-970766, 14th Supp. Order, 1998 WL 223202 * 1 (Mar. 24, 1998).

¹⁴⁹ *Id.* at *5.

gives the Company the opportunity to earn at a given level, reflect relationships between revenues and expenses. It is not a guarantee that each element will meet estimates. The proper means to examine those relationships is a general rate case. The Company's remedy for failure to meet authorized rate of return is to file a general rate case.”¹⁵⁰

b. No Exception to the Rule Against Retroactive Ratemaking Applies.

62. The primary exception to the rule against retroactive ratemaking is the use of deferred accounting to track costs during one period with the possibility for inclusion in rates in a future period.¹⁵¹ The Commission has recognized allowing deferred expenses in rates as a shift in timing of the collection of the expense rather than retroactive ratemaking.¹⁵² The Commission has been clear, however, that deferred accounting requires notice before costs can be tracked for inclusion in rates in the future.¹⁵³

63. In a 2002 case evaluating whether to allow PacifiCorp to track excess NPC for later inclusion in rates, the Commission established that “authorizing deferral accounting, in appropriate circumstances, for costs incurred during periods *that post-date an application to establish such accounting* does not violate the general prohibition against retroactive ratemaking.”¹⁵⁴ The Commission’s lengthy discussion of the sufficiency of the notice of deferred accounting provided by PacifiCorp leaves no doubt that notice of a request for deferred accounting is required before deferred accounting can occur.¹⁵⁵

64. In a later order in that docket, the Commission reiterated its finding that authorizing deferral of excess power costs incurred before notice of the request for deferral was provided to

¹⁵⁰ *Id.*

¹⁵¹ *Re Petition of PacifiCorp for an Accounting Order Authorizing Deferral of Excess Net Power Costs*, Docket UE 020417, 3rd Supp. Order ¶ 24 (Sept. 27, 2002).

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* ¶ 6 (emphasis added).

¹⁵⁵ *Id.* ¶¶ 24-27.

other parties would “undeniably . . . violate the general prohibition against retroactive ratemaking and thus is not a legally sustainable result.”¹⁵⁶

65. The Commission has also found that it cannot retroactively create an accounting order to recognize “a deferral that was neither authorized nor recorded, and impose that deferral now to make up for [the utility] not collecting [the deferral] in the past.”¹⁵⁷ In this case, no party has filed a deferral petition for PacifiCorp’s 2009 or 2010 REC revenues. The Commission should similarly find that retroactively creating a deferral here would be “improper and illegal.”¹⁵⁸

66. Staff, Public Counsel, and ICNU have never explained why they did not file an application for deferred accounting for the Company’s 2010 REC revenues. The 2009 GRC Stipulation expressly anticipated the potential for a filing for deferred accounting related to REC revenues,¹⁵⁹ and included a baseline for REC revenues for the 2010 rate effective period.¹⁶⁰ The record in this case now unequivocally demonstrates that each of these parties were aware of PacifiCorp’s significant REC sale to SCE by January 2010 when ICNU included the CPUC filings related to the contract in the record in the Puget REC case. Had these parties sought deferred accounting in a timely manner, PacifiCorp could have responded by reviewing and seeking to defer matching cost items. Allowing retroactive recovery of 2010 REC revenues without a deferred accounting petition is contrary to Commission precedent and unduly prejudicial to PacifiCorp.

67. With respect to 2009 REC revenues, Commission case law precludes a request for deferred accounting because no REC revenue baseline for 2009 was established in the 2008 GRC

¹⁵⁶ *Re Petition of PacifiCorp for an Accounting Order Authorizing Deferral of Excess Net Power Costs*, Docket UE 020417, 6th Supp. Order ¶ 36 (July 15, 2003).

¹⁵⁷ *Wash. Utils. & Transp. Comm’n v. Olympic Pipe Line Co.*, Docket TO-011472, 20th Supp. Order ¶ 119 (Sept. 27, 2002).

¹⁵⁸ *Id.* ¶ 120.

¹⁵⁹ *Wash. Utils. & Transp. Comm’n v. PacifiCorp*, Docket UE-090205 Order 09, Stipulation ¶ 22 (Dec. 16, 2009).

¹⁶⁰ *Id.*

Stipulation. In Docket UE-020417, PacifiCorp requested deferral of excess NPC.¹⁶¹ The Commission rejected PacifiCorp's request, in part because the Company's prior rate case had been resolved on the basis of a settlement and "there was no specific finding regarding the level of net power supply costs reflected in base rates."¹⁶² The Commission found that there was no basis to find that the NPC expense level included in that prior rate case was an appropriate baseline for deferral.¹⁶³ The Commission found that it would be "arbitrary . . . to simply accept the untested level of base power costs the Company proposes."¹⁶⁴

68. Similarly, in this case the parties resolved the 2008 GRC on a black box settlement that did not specify an agreed-upon level of REC revenues for 2009.¹⁶⁵ Based on the Commission's order in Docket UE-020417, the lack of a baseline for REC revenue for 2009 means there is no reasonable way to measure a deferral of REC revenues for that period. Rather than find that REC revenues should be measured against a zero baseline (as proposed by Staff), the Commission should determine that any request for deferral of 2009 REC revenues would be improper because the baseline assumption would be arbitrary and therefore "not a sound basis upon which to make decisions affecting rates, or even just deferred accounting."¹⁶⁶ The implications of Staff's proposal that a black box settlement establishes a zero baseline would mean that PacifiCorp is entitled to a rate credit for *all* of its hydro-related power costs in 2010, rather than the difference between what was filed and what actually occurred.

¹⁶¹ *Re. Petition of PacifiCorp for an Accounting Order Authorizing Deferral of Excess Net Power Costs*, Docket UE-020417, 6th Supp. Order (July 15, 2003).

¹⁶² *Id.* ¶ 25.

¹⁶³ *Id.*

¹⁶⁴ *Id.* ¶ 32.

¹⁶⁵ Kelly, Exh. No. ALK-2CT, 7:13-16.

¹⁶⁶ *Re. Petition of PacifiCorp for an Accounting Order Authorizing Deferral of Excess Net Power Costs*, Docket UE-020417, 6th Supp. Order ¶ 27 (July 15, 2003).

c. Using a Past Test Year to Establish Future Rates is Standard Ratemaking Practice, Not an Exception to the Rule Against Retroactive Ratemaking.

69. Staff claims an accounting petition is not necessary for the Commission to address recovery of REC revenues as proposed by Staff because “the REC revenues at issue are before the Commission in this case, which is based on a test period beginning January 1, 2009.”¹⁶⁷ Staff appears to be making the same argument it did in briefing in the prior phase of this case—that it is not retroactive ratemaking for the Commission to include in rates revenues from the 2009 historic base period because “[t]his is not a case where a party seeks regulatory treatment of costs incurred prior to a test period.”¹⁶⁸ Staff’s argument ignores its prior admission that PacifiCorp REC revenues have always been forecast to match the forecast NPC period. It also ignores the basic rule against double counting a cost or revenue item in rates, and implies that the Commission could simultaneously order both an historic (2009) and forecast (2011) approach to a single revenue item in one case. In any event, Staff’s argument pertains only to the 2009 historic base period and does not provide any support for its proposal for retroactive collection of 2010 REC revenues.

70. Specifically, Staff’s testimony acknowledges that since Docket UE-080220, the Commission has set rates for the Company using a forecast level of REC revenues for the rate effective period.¹⁶⁹ In addition, Staff offset the 2010 REC revenues with the forecast of REC revenues stated in the 2009 GRC order.¹⁷⁰ As outlined above, all of the facts show that the REC rate credit now in place is based upon a forecast for the rate effective period and is expressly subject to true up against actual REC revenues for the rate effective period.

¹⁶⁷ Breda, Exh. No. KHB-7TC 14:17-21.

¹⁶⁸ Initial Brief on Behalf of Commission Staff ¶ 32.

¹⁶⁹ Breda, Exh. No. KHB-7TC 11:3-4.

¹⁷⁰ Breda, Exh. No. KHB-7TC 6:23-24.

71. Notwithstanding this undisputed record, Staff and ICNU/PC propose to re-establish 2009 REC revenue levels in this proceeding (ignoring the 2008 GRC Stipulation and order which already set rates for this period) using a 2009 historic “actual” level. However, both Staff and ICNU/PC include additional *imputed* revenues—revenues that by their own admission did not actually occur in 2009.¹⁷¹ Staff and ICNU/PC have not addressed the propriety of seeking both an historic and forecast revenue level for the same revenue item in one case. There is no precedent for such an approach, which on its face double-counts the revenue item and imputes additional revenue that was not actually received.

72. On top of this, the parties also propose to capture the actual and imputed levels of 2010 revenues through this proceeding, even though 2010 is neither the test period nor the rate effective period in this proceeding.¹⁷² This results in the confiscation of three years of REC revenues, some of which never actually occurred, in a single rate case proceeding—the historic test year, the forecast rate period and the time period in between.¹⁷³ There is no other cost or revenue element in this rate case that triple-counted the element in this manner.¹⁷⁴ If applied even-handedly, the precedent established by adopting Staff and ICNU/PC’s approach would permit the Company to establish a dollar-for-dollar balancing account for differences between forecast and actual plus imputed NPC from its last two GRCs, simultaneously with establishing a new forecast NPC baseline in rates and a dollar-for-dollar balancing account for the rate effective period and all periods going forward.¹⁷⁵

73. Under Staff’s interpretation of the historic test year, all revenues and costs from the test period are effectively exempt from the doctrine against retroactive ratemaking. Staff’s

¹⁷¹ See Breda, Exh. No. KHB-7TC 6:22-23; Schoenbeck, Exh. No. DWS-5CT 5:13-20.

¹⁷² Kelly, Exh. No. ALK-2CT 3:5-7.

¹⁷³ *Id.* at 3:5-10.

¹⁷⁴ *Id.* at 3:10-11.

¹⁷⁵ *Id.* at 4:1-12.

interpretation of retroactive ratemaking would allow for a true up in a future period of all revenues received and costs incurred in the test period. Such a result is antithetical to Washington's traditional approach to ratemaking and should be rejected.

d. The Commission Should Reject Staff's and ICNU/PC's Proposals to Adopt Ad Hoc Exceptions to the Doctrine Against Retroactive Ratemaking.

74. As discussed above, retroactive ratemaking bars the inclusion of past REC revenues in future rates and the primary exception to retroactive ratemaking, deferred accounting, does not apply in this case. Therefore, Staff's and ICNU/PC's proposals require the Commission to create an ad hoc exception to the doctrine against retroactive ratemaking. Not only would such an outcome raise constitutional concerns, but it would also be inconsistent with the Commission's rules and precedent.

75. First, allowing retroactive recovery of revenues on an ad hoc basis would raise the concern raised by the Supreme Court in *Duquesne v. Barasch*, 488 US 299, 314 (1989): “[a] State’s decision to switch arbitrarily back and forth between methodologies in a way which required investors to bear the risk of bad investments at some times while denying them the benefit of good investments at others would raise serious constitutional questions.”¹⁷⁶ As just noted, Staff and ICNU/PC are requesting that the Commission allow recovery not only of REC revenues expected in the rate effective period, but for two prior years. This unprecedented approach is exactly the type of arbitrary ratemaking methodology referenced by the Supreme Court as raising serious constitutional concerns.

76. Second, as discussed above, the Commission's rules and precedent do not provide for retroactive recovery of revenues in the absence of a deferral application. Staff includes in

¹⁷⁶ *Duquesne v. Barasch*, 488 US 299, 314 (1989).

testimony reference to “examples in which the Commission has approved the amortization of a specific item or separate tariff treatment of a specific item” to support Staff’s claim that their retroactive recovery of REC revenues is appropriate.¹⁷⁷ The examples Staff cites are irrelevant to the ratemaking considerations at issue in this case. No party is arguing that amortization or separate tariffs are inappropriate methods for including a cost or revenue in rates. The issue is whether the particular cost or revenue can be included in rates to begin with. None of the orders cited by Staff involve what Staff and ICNU/PC are proposing here: a retroactive tracking of two years of historic actual revenues without a deferral, on top of a forward looking adjustment.

3. The Filed Rate Doctrine Prohibits Changing the Rates Established in the 2008 and 2009 GRC Orders.

77. The filed rate doctrine prohibits changing the rates established in the 2008 and 2009 GRC orders. Under RCW 80.28.080, a utility must charge the rates specified in its rate schedule filed and in effect at the time and cannot “directly or indirectly refund or remit in any manner or by any device any portion of the rates or charges so specified.” The Commission described the filed rate doctrine as providing that “[s]o long as a final, nonprovisional rate is in place it can be changed only prospectively.”¹⁷⁸ As a result, ordering refunds of a nonprovisional rate would violate the filed rate doctrine.¹⁷⁹

78. The Commission rejected a request by Puget to retroactively alter a tariffed rate by citing to RCW 80.28.080 and the doctrine against retroactive ratemaking.¹⁸⁰ In that case, Puget filed a petition to unwind the accounting petition relevant to a conservation incentive credit.¹⁸¹ Puget’s proposal would have the effect of changing the rate credit included in that tariff by deferring

¹⁷⁷ See Breda, Exh. KHB-7TC 3:21-5:5.

¹⁷⁸ *Re. Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Docket UE-981238, 4th Supp. Order (Apr. 5, 1999).

¹⁷⁹ *Id.*

¹⁸⁰ *Re. Application of Puget Sound Energy for Authorization Regarding the Deferral of the Net Impact of the Conservation Incentive Credit Program*, Docket UE-010410, Order (Nov. 9, 2001).

¹⁸¹ *Id.* ¶ 2.

amounts paid to customers under that schedule and charging those amounts back to customers through a different schedule.¹⁸² The Commission found that this request amounted to a proposal “to reach back in time to alter the tariffed . . . rate” and rejected the proposal.¹⁸³ The Commission cited both RCW 80.28.080, which prohibits a utility from charging a rate for service that deviates from its tariffed rate, and the doctrine against retroactive ratemaking in reaching its conclusion.¹⁸⁴

79. The proposals of Staff and ICNU/PC also seek to reach back in time to alter the tariffed rates ordered by the Commission in the 2008 and 2009 GRC orders. As the Commission did in the case of Puget’s proposal, the Commission should find that the filed rate doctrine embodied in RCW 80.28.080 prohibits this result.

4. Orders in the 2008 and 2009 GRCs Preclude Retroactive Recovery of REC Revenues.

a. Staff’s and ICNU/PC’s Proposals Constitute Unlawful Collateral Attacks on the 2008 and 2009 GRC Orders.

80. Staff and ICNU/PC indirectly attack stipulations to which they are parties and the Commission’s final orders in the 2008 and 2009 GRCs by proposing to retroactively account for revenues that were considered by the parties and the Commission in those rate cases. The Commission should reject Staff’s and ICNU/PC’s proposals as improper collateral attacks on the Commission’s 2008 and 2009 GRC orders.

81. The Commission’s statutes expressly set forth the procedure by which a rate ordered by the Commission may be altered. Under RCW 80.04.210, the Commission may “at any time, upon notice to the public service company affected, and after opportunity to be heard as provided in the case of complaints rescind, alter or amend any order or rule made, issued or promulgated

¹⁸² *Id.* ¶ 8.

¹⁸³ *Id.* ¶ 7.

¹⁸⁴ *Id.*

by it.” The statutes do not contemplate an indirect attack on a rate order by retroactively accounting for a revenues evaluated in a prior order in a later order. Moreover, as a general proposition, collateral attacks on Commission rate orders are prohibited.¹⁸⁵ Staff and ICNU/PC have not proposed that the Commission amend the 2008 and 2009 GRC orders under RCW 80.04.210. The Commission should reject their attempt to attack those orders indirectly, as the ALJ did in dismissing ICNU/PC’s complaint.¹⁸⁶

82. Not only does the Commission’s statute governing the amendment of orders foreclose Staff’s and ICNU/PC’s proposals, but the proposals are antithetical to the ratemaking framework governing the Commission. Under *Federal Power Commission v. Hope Natural Gas*, “[u]nder the statutory standard of ‘just and reasonable’ it is the result reached not the method employed which is controlling. . . . The fact that the method employed to reach that result may contain infirmities is not then important.”¹⁸⁷ Staff’s and ICNU/PC’s proposals are inconsistent with the Supreme Court’s finding that it is the overall result of a rate order that is the determinative factor in reviewing the order, not the methods used. If Staff and ICNU/PC had appropriately challenged the 2008 and 2009 GRC orders under RCW 80.04.210, the Commission would have had the opportunity to evaluate the validity of the orders as a whole, as is consistent with the ratemaking framework used by the Commission. If the Commission had done so, as the ALJ observed in dismissing the ICNU/PC REC complaint, “it is at least equally likely that the final

¹⁸⁵ See e.g. *Re Application of Portland Gen. Elec. Co. for an Investigation into Least Cost Plant Retirement*, Docket DR 10 *et al.*, Order No. 08-487 at 8 (O.P.U.C. Sept. 30, 2008) (“Once final, a Commission rate order is not subject to collateral attack.”); *Neb. Pub. Advocate v. Neb. Pub. Serv. Comm’n*, 279 Neb. 543 (2010) (Public Advocate’s complaint was impermissible collateral attack on prior rate order because it raised an issue that should have been raised in the rate case); *Anchor Lighting v. So. Calif. Edison*, Case 02-03-060, Decision 03-08-036, 2003 WL 22118931 (C.P.U.C. Aug. 21, 2003) (complaint dismissed as collateral attack, which is an “attempt to impeach the judgment or order in a proceeding other than that in which the judgment was rendered.”).

¹⁸⁶ Administrative Law Judge’s Initial Order ¶ 41 (“[Allowing ICNU and Public Counsel to reopen the docket to relitigate the issues they could have litigated then] would be to allow an improper collateral attack on Order 09 in Docket UE-090205.”)

¹⁸⁷ 320 U.S. 591, 602 (1944).

result would be an overall increase in revenue greater than the [increase] to which the parties agreed.”¹⁸⁸

b. Any Amendment to the 2008 and 2009 GRC Orders Could be Prospective Only, and Therefore Moot Because of the 2010 GRC Order.

83. Even if Staff and ICNU/PC had challenged the 2009 and 2010 GRC orders under RCW 80.04.210, because the Commission cannot establish retroactive rates, any amendment to these orders is now moot. The rates established in the 2009 and 2010 rate orders have been supplanted by rates in this case as of April 3, 2011. As the ALJ explained in the Initial Order Dismissing Complaint, “it is impossible at this juncture to achieve a meaningful result by amending Order 09.”¹⁸⁹ The appropriate remedy under the Commission’s statutes—amendment of the 2008 and 2009 GRC orders under RCW 80.04.210—is therefore not timely.

5. Including Past REC Revenues in Future Rates without Reflecting Associated Past NPC Costs Constitutes Improper Single-Issue Ratemaking and Violates the Matching Principle.

84. The Commission disfavors single-issue ratemaking because it violates the matching principle.¹⁹⁰ The matching principle requires “revenues and costs [to be] balanced at a common point in time, *i.e.* a rate case, to determine fair, just, reasonable and sufficient rates.”¹⁹¹ Single issue ratemaking violates this principle because it sets rates based upon an examination of only one component.¹⁹²

¹⁸⁸ Administrative Law Judge’s Initial Order ¶ 43.

¹⁸⁹ *Id.* ¶ 35.

¹⁹⁰ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy Co.*, Dockets UE-090704 and UG-090705, Order 10 ¶ 7 (Jan. 8, 2010); *Wash. Utils. & Transp. Comm’n v. PacifiCorp*, Docket UE-061546, Order 08 at ¶ 152 (June 21, 2007) (“True-up mechanisms, a form of single issue ratemaking, are not generally favored in utility ratemaking.”).

¹⁹¹ *Wash. Utils. & Transp. Comm’n v. Avista*, Docket UG-060518, Order 04 at ¶ 19 (Feb. 1, 2007).

¹⁹² *See Re U.S. West Comm., Inc.*, Docket UT-920085, 3rd Suppl. Order. At 5 (Apr. 15, 1993) (“without considering other aspects of the company’s rate structure [this] would amount to single issue ratemaking”); *Re US West Communications, Inc.*, Docket UT-970766, 14th Suppl. Order at 5 (Mar. 24, 1998) (“the proper means to examine [revenues and expenses] is a general rate case”); *MCI Telecommunications Corp. v. GTE Northwest, Inc.*, Docket UT-970653, Second Suppl. Order (Oct. 22, 1997) (“The Commission has consistently held that these questions are

85. No party can reasonably argue that Staff's and ICNU/PC's proposals do not constitute single-issue ratemaking because they seek a retroactive adjustment for REC revenues without accounting for associated cost elements. Specifically, it is a violation of the matching principle to account for RECs but not account for the NPC associated with those RECs, because RECs and megawatt hours are generated from the same source at the same time.¹⁹³ Public Counsel itself has argued that "REC revenues are directly related to the proper analysis of power costs Joint Movants do not explain why it is appropriate to update PSE power costs as was done in the most recent supplemental filing, without updating related revenues."¹⁹⁴ Similarly, Staff and ICNU/PC have not explained why it is appropriate to retroactively account for REC revenues but not do so for the NPC associated with generating those revenues.

86. If the Commission adopts Staff's or ICNU/PC's proposal for including additional REC revenues from 2009 and 2010 in rates, the Company requests that the Commission offset these revenues with the under forecast in NPC that resulted from lower than expected hydro conditions during this same time period. As explained in the testimony of Andrea Kelly, in 2009 and 2010, actual hydro conditions were less favorable than the level included in rates.¹⁹⁵ The Washington-allocated cost to the Company of this lower hydro generation was \$7.9 million in 2009 and \$2.4 million in 2010, for a total increase to NPC of \$10.3 million.¹⁹⁶

87. To avoid establishing an unfair and one-sided policy, if the Commission finds that retroactive recovery of REC revenues is appropriate, it should find that retroactive recovery of

resolved by a comprehensive review of the company's rate base and operating expenses, determining a proper rate of return, and allocating rate changes equitably among ratepayers.");

¹⁹³ Duvall, Exh. No. GND-5T 6:12-16.

¹⁹⁴ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Docket UE-090704, Order 10 ¶ 7 (Jan. 8, 2010) (quoting Public Counsel's Motion to Strike).

¹⁹⁵ Kelly, Exh. No. ALK-2CT 5:13-14. In 2009 hydro generation was approximately 105 average megawatts below the hydro generation included in the NPC study used in Docket UE-080220 and the 2010 hydro generation was approximately 23 average megawatts below the hydro generation included in the NPC study used in Docket 090205. *Id.* at 5:14-18; Kelly, Exh. No. ALK-3.

¹⁹⁶ Kelly, Exh. No. ALK-2CT 5:18-20.

matching NPC-related costs is also appropriate. While the Company did not file a deferred accounting petition requesting recovery of increased NPC associated with lower hydro generation, neither did Staff or ICNU/PC file a deferred accounting petition associated with REC revenues. In fact, Staff states that if the Company was interested in requesting recovery of additional power costs, they could do so under Staff's theory.¹⁹⁷

B. Staff's and ICNU/PC's Calculations of 2009 and 2010 REC Revenues Are Incorrect.

88. Although the Company believes that the Commission should reject Staff's and ICNU/PC's proposals to reflect in rates REC revenues received in 2009 and 2010 for the reasons described above, if the Commission accepts either proposal, it should made the modifications outlined below. Staff's proposal in particular is problematic because it has changed in each subsequent filing, in each case increasing the amount of REC revenues.¹⁹⁸

1. The Proposed Retroactive Change to the Allocation Method for 2009 and 2010 RECs Should Be Rejected.

89. Staff and ICNU/PC propose changing the allocation of REC revenues to Washington from the methodology used in previous filings and in the prior phase of this case. Their proposal is inappropriate for a number of reasons and should be rejected. First, the allocation method proposed by the Company is the same method used in the 2009 and 2010 Commission Basis Reports, all previous Quarterly REC Revenue Reports provided to Staff and ICNU/PC, and the Company's rebuttal revenue requirement filing in this case.¹⁹⁹ In fact, the REC revenues proposed by Staff to be included in rates in the previous phase of this case were calculated using the allocation method proposed by PacifiCorp.²⁰⁰ In addition, although Staff states that Staff "discovered" that PacifiCorp banked certain RECs for compliance in Oregon and California

¹⁹⁷ Breda, Exh. No. KHB-7TC 14:17-23.

¹⁹⁸ Dalley, Exh. No. RBD-28CT 13:11-20; Kelly, Exh. No. ALK-2CT 7:17-8:17.

¹⁹⁹ Dalley, Exh. No. RBD-28CT 7:12-18.

²⁰⁰ *Id.* 7:19-8:3.

before allocating to Washington,²⁰¹ this is not a new discovery.²⁰² Nearly three years ago PacifiCorp explained to Staff, ICNU, and Public Counsel that it was banking Oregon and Washington RECs.²⁰³ Retroactive reallocation of REC revenues is inappropriate, especially given the fact that the Company has no opportunity to reallocate other cost or revenue components from those periods.²⁰⁴

2. 2009 REC Revenues Should Be Offset by the Amount of REC Revenues Included in Rates in that Year.

90. Staff's and ICNU/PC's calculation of 2009 REC revenues inappropriately excludes an offset for REC revenues included in rates in that year. As discussed above, based on Commission precedent, the fact that there is no approved REC baseline against which actual REC revenues can be measured means that deferral or true up of such revenues should be rejected by the Commission, even if a party had properly requested a deferral. However, if the Commission decides to include a retroactive credit in rates for 2010 REC revenues, it should reduce those revenues by the \$576,254 of REC revenues included in the Company's filing in Docket UE-080220.²⁰⁵

91. Staff justifies exclusion of the REC revenues included in rates for 2009 on the basis that the stipulation in Docket UE-080220 was a black box settlement.²⁰⁶ Staff's proposal is inappropriate because it assumes no REC revenues were included in rates without any supporting evidence. In contrast, the fact that the Company included REC revenues in its initial filing in that case indicates that some level of REC revenues was included in rates. No party objected to the Company's estimate of \$576,254 for REC revenues in 2009 and that amount should be

²⁰¹ Breda, Exh. No. KHB-7TC 7:9-13.

²⁰² Dalley, Exh. No. RBD-28CT 8:7-21.

²⁰³ *Id.*

²⁰⁴ *Id.* at 11:3-14.

²⁰⁵ Kelly, Exh. No. ALK-2CT 7:6-12.

²⁰⁶ *Id.* at 7:13-16.

credited against REC revenues if the Commission orders a retroactive credit of REC revenues for that year.

3. Schedule 95 Should Remain as Ordered by the Commission and Should Change Based on the Forecast and True Up Each Year.

92. Staff proposes that the Commission change the REC tracking mechanism from that originally ordered to one based on actual REC revenues, not a forecast and true-up.²⁰⁷ ICNU/PC agree with this proposal.²⁰⁸ Staff claims that forecasts of RECs have been inaccurate, so actual REC revenues should be reflected in the credit.²⁰⁹ No party has ever challenged the REC forecasts of the Company including the REC forecast contained in the Company's compliance filing for the rate effective period.²¹⁰ Staff and ICNU/PC also propose that the rate remain the same in Schedule 95 until the balancing account is exhausted, or until ongoing REC sales indicate a different credit rate is appropriate.²¹¹

93. Staff's and ICNU/PC's proposal is unreasonable and unsupported. If the Commission orders retroactive recovery of 2009 and 2010 RECs, the Company will need to record the full amount of the adjustment in the year in which the liability is created.²¹² Spreading the return of REC revenues over the [REDACTED] that would result under Staff's and ICNU/PC's proposal further increases the financial burden on the Company.²¹³ There is also no support for modifying the forecast/true up nature of the REC tracking mechanism on a prospective basis.

²⁰⁷ Breda, Exh. No. KHB-7TC 10:11-14.

²⁰⁸ Schoenbeck, Exh. No. DWS-5CT 8:12-16.

²⁰⁹ Breda, Exh. No. KHB-7TC 11:6-8.

²¹⁰ Kelly, Exh. No. ALK-2CT 5:2-3.

²¹¹ Breda, Exh. No. KHB-7TC 10:14-15; Schoenbeck, Exh. No. DWS-5CT 9:6-12.

²¹² Kelly, Exh. No. ALK-2CT 11:18-20; Dalley, Exh. No. RBD-28CT 3:3-13.


²¹³ Kelly, Exh. No. ALK-2CT 11:20-21.

4. Staff's Proposal Inappropriately Mixes and Matches Allocation Methods.

94. The third iteration of Staff's proposal inappropriately mixes and matches the previous two allocation methods proposed by Staff.²¹⁴ Staff's third method includes an allocation of revenues from RECs booked in 2009 or 2010, which includes RECs generated in 2008. Staff's basis for this method is that accounting principles require the consideration of when revenue is realized and earned.²¹⁵ However, only a portion of Staff's proposal is based on this principle. Staff does not apply this principle to the allocation method for the calculation of imputed revenues for RECs held for compliance.²¹⁶ By mixing and matching allocation methods, Staff increases 2009 and 2010 REC revenues over what they would be if Staff consistently applied the forward-looking methodology that Staff claims is appropriate.²¹⁷ Staff's arbitrary proposal further undermines the validity of Staff's overall approach and should be rejected.

5. ICNU's Proposal Inappropriately Imputes Revenues for Sales in 2009 and 2010.

95. Finally, ICNU/PC's proposal should be rejected because it imputes revenues for sales in 2009 and 2010 that did not actually occur. ICNU/PC's calculation assumes that the Company could have sold 100 percent of RECs held for compliance in 2009 and 2010.²¹⁸

²¹⁹ ICNU's assumption that the Company could have sold 100 percent of RECs is in direct conflict with the evidence in this case.

²¹⁴ *Id.* at 8:7-14.

²¹⁵ Breda, Exh. No. KHB-9TC 3:5-9.

²¹⁶ Dalley, Exh. No. RBD-28CT 14:22-15:1.

²¹⁷ *Id.* at 15:2-4.

²¹⁸ *Id.* at 18:16-17.

²¹⁹ *Id.* at 18:19-19:2.

V. CONCLUSION

96. To adopt Staff's and ICNU/PC's retroactive REC tracker proposals, the Commission would have to disregard or distinguish numerous, fundamental Commission policies and precedents, turn a blind eye to the undisputed facts about PacifiCorp's chronic under earning, and be willing to take back most of the revenue requirement increase the Commission ordered in this case just six months ago. Such a decision would have harsh consequences for PacifiCorp, eliminating any possibility that PacifiCorp will earn its allowed rate of return in the rate effective period. It would also mark the beginning of a new and unstable regulatory paradigm, one that encourages parties to litigate single issues when actual cost or revenues do not match the levels set in rates.

97. The Commission has the discretion to address the recovery of REC revenues in a more constructive and equitable manner by: (1) for the historical period, acknowledging that REC revenues have already been accounted for in base rates and are not subject to further litigation; and (2) for the rate effective period, adopting PacifiCorp's REC tracker proposal. This approach reinforces the Commission's strong stance against retroactive ratemaking and supports PacifiCorp's continuing efforts to pursue strategies that reduce costs and benefit both shareholders and customers.

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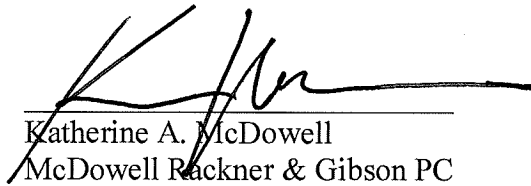
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98. Based upon the record in this proceeding and the legal arguments presented in this brief, the Company respectfully requests that the Commission adopt its forward-looking REC tracking proposal and reject Staff's and ICNU/PC's retroactive REC tracking proposals.

DATED: November 4, 2011.

Respectfully Submitted,



Katherine A. McDowell
McDowell Rackner & Gibson PC
419 SW 11th Ave., Suite 400
Portland, OR 97205
Telephone: (503) 595-3924
Facsimile: (503) 595-3928
Email: katherine@mcd-law.com

Mary M. Wiencke
Legal Counsel
PacifiCorp
825 NE Multnomah, Suite 1800
Portland, OR 97232
Telephone: (503) 813-5058
Facsimile: (503) 813-7252
Email: mary.wiencke@pacificorp.com

Attorneys for PacifiCorp