BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PHASE II OPENING BRIEF ON BEHALF

OF PUBLIC COUNSEL

NOVEMBER 4, 2011

REDACTED VERSION

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I. INTRODUCTION

1. On May 25, 2011, the Commission issued Order 06 in this case, ordering PacifiCorp to return to ratepayers in 12 monthly credits all renewable energy credit (REC) revenues received in 2011.[1] However, the Commission did not resolve the timing and amounts on which to base REC proceed credits for the test and post test years, i.e., 2009 and 2010.[2]

2. This phase of the case was initiated to resolve the timing and amounts on which to base 2009 and 2010 credits. As discussed below, the appropriate time period for calculating REC revenues for return to ratepayers is from the beginning of the test period in this case, January 1, 2009, forward. In addition, with the few amendments described herein, the Commission should adopt the calculation of 2009 and 2010 REC revenues proposed by ICNU/Public Counsel witness, Don Schoenbeck. Finally, the Commission should accept the modifications to the bill credit mechanism proposed by Mr. Schoenbeck and Staff witness, Kathryn Breda.

II. RATEPAYERS ARE ENTITLED TO 100 PERCENT OF REC REVENUES

3. This Commission has clearly established that revenues from REC sales "should be returned to the ratepayers who pay rates to cover all the costs of the related resource[s]."[3] In Order 06 in this case, the Commission again made this clear, stating, "we adhere in this

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[1] *See* Final Order Rejecting Tariff Sheets; Authorizing Increased Rates; and Requiring Compliance Filing (Order 06), ¶ 204.
[2] *See id* at ¶ 203.
[3] *Amended Petition of Puget Sound Energy, Inc. For an Order Authorizing the Use of the Proceeds from the Sale of Renewable Energy Credits and Carbon Financial Instruments,* Docket No. UE-070725, Final Order (Order 03), ¶¶ 41-47 (recognizing that, absent unusual or extraordinary circumstances, REC revenues should be credited to ratepayers).

proceeding to the basic principles discussed in Order 03 in Docket UE-070725 that require the proceeds derived from the sale of RECs to be returned to customers."[4]

4. These principles are supported by the general Commission precedent that "the right to gain follows risk of loss and that the benefit of [a] sale should follow those who bore the burdens…."[5] It is also consistent with the treatment given to revenues from the sale of SO_2 emissions credits, which are similar to RECs in many respects.[6] Finally, these principles are also supported by Washington Supreme Court precedent holding that a utility cannot fail to return to ratepayers the full value of a ratepayer-funded asset.[7]

5. There is no question that the REC revenues at issue here — those received by PacifiCorp during 2009 and 2010 — were generated entirely from ratepayer-funded assets. As Staff witness, Mike Foisy, testified, "ratepayers are paying rates based on the costs of [the underlying assets] which includes a return on PacifiCorp's investment, plus all related operating expenses, and taxes."[8] Applying the principles discussed above, Mr. Foisy concluded that it is therefore "entirely proper for those ratepayers to receive the benefits generated by these assets on the same basis that their rates are set. Said another way, PacifiCorp may not keep this revenue."[9]

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[4] Order 06 at ¶ 202. PacifiCorp does not contest this premise. *See* Exh. No. GND-5T, p. 8:5-6 (Nov. 5, 2010) (Duvall Rebuttal).
[5] *In re the Matter of the Application of Avista Corp. for Authority to Sell its Interest in the Coal-Fired Centralia Power Plant*, Docket Nos. UE-991255, UE-991262, and UE-991409 (consolidated), Second Suppl. Order, ¶ 47.
[6] *See e.g., Petition of Puget Sound Energy, Inc. for an Order Regarding the Authorization to Sell Sulfur Dioxide Emission Allowances and an Associated Accounting Order,* Docket No. UE-001157, Final Order, p. 2 (Oct. 25, 2000).
[7] *U.S. West, Inc. v. WUTC,* 134 Wn.2d 74, 96 (1997) (holding that a regulated utility cannot fail to return to ratepayers the full value of a lucrative, ratepayer-funded asset).
[8] Exh. No. MDF-1CT, pp. 9:20-10:3 (Foisy Responsive).
[9] *Id.*

III. START DATE FOR REC REVENUE CREDIT

A. The Commission Should Calculate REC Revenues for Return to Ratepayers Starting at the Beginning of the Test Period, January 1, 2009.

6. As recommended by Commission Staff,[10] ICNU,[11] and Public Counsel,[12] the appropriate time period for calculating REC revenues for return to ratepayers is from the beginning of the test period in this case, January 1, 2009, forward. Staff explained this in its Post-Hearing Brief:

> The Commission has before it a rate case, where the Company has put into issue its revenues, expenses and rate base amounts.... In this particular case, the Commission has before it a test year ended December 31, 2009, with a 2011-2012 rate year. Events and costs that materialized in 2010 are also before the Commission.... This is not a case where a party seeks regulatory treatment of costs incurred prior to a test period.[13]

7. As discussed below, Commission precedent supports addressing test period and post test period REC revenues here. Moreover, PacifiCorp's argument that non-Company parties were required to file an accounting petition to address 2009 and 2010 REC revenues is erroneous.

1. Commission precedent shows that actual test period revenue and expense items may be addressed in the corresponding general rate case.

8. In the 1999 Avista general rate case, the Commission approved returning revenues received by Avista during the test period due to a buy-down of a contract with Portland General Electric (PGE).[14] The facts of that case are similar to the facts here in a number of respects. First, the Avista case dealt with revenues received by the Company prior to the rate-effective

[10] Exh. No. KHB-7CT, p. 1:16-20 (Breda Phase II Responsive).
[11] Exh. No. DWS-5CT, p. 7:7-9 (Schoenbeck Phase II Responsive).
[12] *Id.*; Confidential Post-Hearing Brief of Public Counsel, ¶ 57.
[13] Post-Hearing of Staff, ¶¶ 32-33.
[14] This Order also approved a five-year amortization of extraordinary expenses incurred during the test period for Avista's preparation of its systems for the Y2K transition. *WUTC v. Avista Corp.,* Docket Nos. UE-991606/UG-991607 (consolidated), Third Suppl. Order (Sept. 29, 2000), ¶ 234.

period. Specifically, Avista had received a lump sum from PGE (through its affiliate, Avista Energy), of $96 million during the test period.[15] The Commission noted that the issue was *not* whether ratepayers were entitled to the $96 million—it was evident that they were since the original PGE contract was paid for by ratepayers—but simply how best to credit that amount to customers.[16] As PacifiCorp similarly does in this case, Avista sought to retain a portion of the test period revenues for its shareholders.[17] The Commission denied Avista's request to retain any revenues, questioning whether such an award would ever be appropriate.[18]

9. The facts of the 1999 Avista case are comparable to the facts in this case in yet another respect. In the Avista case, the Company did not fully disclose the test-year buy down agreement at the time the agreement was entered, nor did it seek an accounting order regarding the revenues it received during the test period.[19] In response to other parties' recommendations that the Commission penalize Avista for failing to disclose the transaction when it occurred, the Company acknowledged that it could have "done more to earlier inform this commission although [it was] not technically required to do so…."[20] The Commission addressed Avista's failure to disclose the transaction and revenues, stating: "The Commission is troubled by Avista's handling of the PGE test year buy-down transactions. The Company did not disclose

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[15] *WUTC v. Avista Corp.,* Docket Nos. UE-991606/UG-991607 (consolidated), Third Suppl. Order (Sept. 29, 2000), ¶¶ 40 and 47.
[16] *Id.* at ¶ 73. The Commission stated that they were "left now to decide how best to recognize the ratepayer interest in the proceeds of the transaction." *Id.* at ¶ 75.
[17] *Id.* at ¶ 110.
[18] *Id.* at ¶ 111.
[19] *Id.* at ¶ 56.
[20] *WUTC v. Avista Corp.,* Docket Nos. UE-991606/UG-991607 (consolidated), Post Hearing Brief of Avista, p. 16.

this transaction in its case-in-chief and it was only through the diligence of the Staff and ICNU investigations that the nature and details of this transaction came fully to light."[21]

10. Besides the Avista case, there are numerous other examples of Commission orders allowing recovery of actual test period and post test period revenues and expenses. In an earlier Puget Sound Power & Light case, the Commission approved amortization of test period expenses related to the prudent costs of an abandoned nuclear project.[22] In the 2005 Puget Sound Energy general rate case, the Commission created a new tariff schedule to credit ratepayers the past period benefits of Production Tax Credits (PTCs) from the Company's Hopkins Ridge wind facility.[23] In PacifiCorp's 2008 general rate case, the Commission approved a settlement that included a three-year annual surcharge to recover roughly $6 million in deferred hydro generation costs incurred by the Company during previous periods.[24] And most recently, in PacifiCorp's 2009 general rate case, the Commission approved a settlement which provided a six-year amortization of $18.0 million of previously-incurred costs associated with the Chehalis plant and a three-year amortization of $2.9 million in past period pension gains.[25]

11. In sum, there is ample support for the Commission addressing PacifiCorp's actual 2009 and 2010 REC revenues here.

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[21] *Id.* at ¶ 67. *See also* ¶ 72.
[22] *WUTC v. Puget Sound Power & Light Co.,* Cause U-82-38, Third Suppl. Order (July 28, 1983), pp. 19-20.
[23] *WUTC v. Puget Sound Energy, Inc.,* Docket Nos. UE-090704/UG-090705 (consolidated), Order 11 (Apr. 2, 2010), ¶¶ 179-80.
[24] *WUTC v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket No. UE-080220, Order 05 (Oct. 8, 2008), ¶ 11.
[25] *WUTC v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket No. UE-090205, Order 09 (Dec. 16, 2009), ¶¶ 15-18 and ¶¶ 29-32.

2. PacifiCorp's argument that parties were required to file an accounting petition in order to address 2009 or 2010 revenues is a red herring.

12. An accounting petition is not required for parties, or the Commission, to address actual test period and post test period revenues. As Ms. Breda stated in her Responsive Testimony, there is no precedent requiring a party to file a petition for deferred accounting during an ongoing rate proceeding to address items in the current proceeding's test year.[26] Moreover, in this case, it would have been virtually impossible as a practical matter for any non-Company party to file an accounting petition previously because no other party was privy to the information necessary to form the basis of such a petition.

13. The fact that parties could have in theory filed for deferred accounting does not preclude parties from addressing 2009 and 2010 REC revenues in this case. In PacifiCorp's 2009 general rate case, parties never took the position that deferred accounting was the only means contemplated to address REC revenues. ICNU noted that the reports would provide parties the ability to file for deferred accounting or request that the Commission take another action.[27] Moreover, the settlement contained no provision purporting to limit the Commission's authority to address 2009 and 2010 REC revenues in this case. Thus, the Commission retains its authority to address 2009 and 2010 REC revenues here.

14. In addition, no non-Company party could have, as a practical matter, filed for deferred accounting of REC revenues prior to this case. The REC reports mandated by the 2009 settlement did not actually reveal the substantial increase in REC revenues that occurred in the

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[26] Exh. No. KHB-7CT, p. 14:1-23 (Breda Phase II Responsive).
[27] *Id.* at ¶ 42.

last months of 2009 and 2010 until well after this case was filed. This is illustrated by Table 1 on page 19 below.

15. Finally, while the Company repeatedly points out that no other party filed for deferred accounting, it fails to acknowledge that it, too, did not file such a petition. Instead of addressing its own failure to disclose the REC revenues at issue, PacifiCorp now seeks to blame to other parties for not making a filing that the Company's own actions prevented parties from being able to make. Indeed, the Company was the only party in the position to make such a filing since it alone had current and accurate information regarding revenues and anticipated revenues.[28]

B. Even if 2009 and 2010 REC Revenues are Considered Out-of-Period, Exceptions to the Rule Against Retroactive Ratemaking Exist Where a Company has Failed to Disclose Information Pertinent to the Rate-Setting Process and Where Revenues are Extraordinary.

16. In general, retroactive ratemaking occurs when rates are set to allow a utility to recoup past losses or to refund customers past excess revenues. This Commission has defined retroactive ratemaking as follows: "Retroactive rate making involves surcharges… applied to rates which had been previously paid, constituting an additional charge applied after the service was provide or consumed."[29] The rule against retroactive ratemaking is an equitable doctrine that serves two basic functions: (1) it protects current customers from being required to pay for

[28] Puget Sound Energy—the other Washington utility receiving substantial REC revenues—filed just such a petition years earlier. *See generally* Docket No. UE-070725.
[29] *WUTC v. Puget Sound Energy, Inc.,* Docket No. UE-010410, Order Denying Petition to Amend Accounting Order (Nov. 9, 2001), ¶ 7.

past deficits of the utility, and (2) prevents the utility from using future rates to ensure its shareholders' investments.[30]

17. The Commission has recognized limited exceptions to the rule against retroactive ratemaking. One exception applies where a utility fails to disclose information pertinent to proper resolution of the rate-setting proceeding. Another exception applies where cost or revenue items are extraordinary and unanticipated. As discussed below, both of these exceptions apply to the facts of this case. Thus, even if the Commission determines that crediting ratepayers 2009 and 2010 revenues would, in the most literal sense, qualify as retroactive, it may still consider the revenue under these established exceptions.

1. The exception to the rule against retroactive ratemaking for failure to disclose pertinent information applies here.

18. Because the rule against retroactive ratemaking is governed by "tests of conscience and fair dealing,"[31] courts have found that an exception exists where the utility seeking to rely on the rule has failed to disclose information pertinent to the proper resolution of the process by which the rates at issue were set.[32]

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[30] *See* Stephen H. Krieger, *The Ghost of Regulation Past: Current Applications of the Rule Against Retroactive Ratemaking in Public Utility Proceedings*, 1991 U. Ill. L. Rev. 983, 1004 (1991), *citing Narragansett Elec. Co. v. Burke*, 415 A.2d 177, 178-79 (R.I. 1980).

[31] *Atlantic Coast Line Railroad v. Florida,* 295 U.S. 301, 314 (1935).

[32] *See Ca. ex rel. Lockyer v. FERC*, 383 F.3d 1006, 1015-16 (9th Cir. 2004) (holding that FERC may issue retroactive refunds to energy purchasers where wholesalers failed to file required reports during the wholesale rate setting process); *MCI Telecom. Corp. v. Pub. Serv. Comm'n of Utah*, 840 P.2d 765, 775 (Utah 1992) (reversing a Commission dismissal of a request for refunds for overearnings of a utility caused by a change in federal income tax rate where the utility did not fully disclose the effect of the change); *Wise v. Pacific Gas & Elec. Co.,* 77 Cal.App.4th 287, 299-300 (Ct. App. 1st Dist. 1999) (reversing a Commission dismissal of a consumer complaint seeking retroactive refunds for amounts the utility had charged for a regulator replacement program that it had subsequently cancelled and alleging that the utility had failed to reveal information regarding cancellation of the program).

19. In *Salt Lake Citizen's Congress v. Mountain States Telephone & Telegraph Co.*, the Utah Supreme Court explained this exception:

> The rule against retroactive ratemaking precludes adjustments of approved rates to correct errors or missteps in the ratemaking process. The fundamental policy embodied in that rule, however, *does not permit a utility to subvert the integrity of rate-making proceedings by misconduct that affects rates in a manner favorable to the utility. We recently stated... A utility that misleads or fails to disclose information pertinent to whether a rate-making proceeding should be initiated or to the proper resolution of such a proceeding cannot invoke the rule against retroactive rate making to avoid refunding rates improperly collected.*[33]

20. In *Salt Lake*, customers filed a complaint against Mountain States Telephone & Telegraph (Mountain Bell), seeking refunds for rates charged by the Company in previous periods. In multiple previous rate cases, Mountain Bell had included charitable contributions in its test period expenses. In each of these cases, the Commission approved the rate increases without commenting on charitable contributions.[34] Customers thus sought refunds for the amount of charitable contributions that Mountain Bell had included in its previous rate cases.

21. The Company argued that the rule against retroactive ratemaking prohibited awarding refunds. The Company contended that it had "made clear" in its rate case filings that it was including contributions above-the-line since it had it included "charitable contributions" in exhibits to its filing.[35] The Commission found in favor of Mountain Bell and dismissed the complaint, holding that granting refunds would violate the rule against retroactive ratemaking.[36]

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[33] 846 P.2d 1245, 1254 (Utah 1993) (emphasis added and internal citations omitted).
[34] *Id.* at 1249. The Commission had also required all utilities, including Mountain Bell, to file a report regarding contributions. Mountain Bell complied with the reporting requirement, but did not make clear whether it was charging contributions to shareholders or ratepayers. *See id.* at 1248.
[35] *Id.* at 1249.
[36] *Id.* at 1250.

22. On appeal, the Utah Supreme Court reversed the Commission's decision. The Court stated that the allegations regarding Mountain Bell's failure to disclose information "clearly fit within the scope of the exception to the rule against retroactive ratemaking."[37] The Court rejected the Commission's finding that any concealment on the part of the Company was "in plain sight" since the Company had included a page in its exhibits identifying charitable contributions. The Court went on to state that "[r]ate-making proceedings are *not* to be conducted on the basis of gamesmanship," and that the Commission's decision to dismiss the complaint and not address the allegations therein was "far worse than an abuse of discretion; it [was] an abdication of its responsibility to the public."[38]

a. PacifiCorp failed to disclose information regarding REC revenues in its 2009 general rate case.

23. During the 2009 general rate case, PacifiCorp based its pro forma adjustment to REC revenues on 2007 prices that were lower than both what the Company had received during the 2008 test period and what it knew it would begin receiving in the last quarter of 2009.[39] This resulted in a reduction to test period revenue of over $4 million.[40] Like Mountain Bell, PacifiCorp was not fully forthcoming about this adjustment and offered no testimony explaining why it was proper. Moreover, as consistent with the holding in *Salt Lake*, the fact that PacifiCorp included a pro forma adjustment addressing REC revenues does not counteract the

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[37] *Id.* at 1254.
[38] *Id.* at 1254-55 (emphasis original).
[39] It is notable that the settlement stipulation in 2009 rate case was filed with the Commission on August 25, 2009, roughly one month before PacifiCorp began receiving revenues under the high-priced contingent contracts.
[40] *WUTC v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket Nos. UE-090205, Exh. No. RBD-3, p. 3.7.1.

fact that the Company concealed the amount of REC revenues it knew it would receive during 2009 and 2010.

24. Also during the 2009 rate case, PacifiCorp failed to disclose the fact that it had executed very high-priced REC sales contracts with various California utilities for sales commencing in October, 2009. PacifiCorp has admitted that it did not disclose these contracts, even though they were executed during the discovery phase of that case and received approval of the California commission prior to the evidentiary hearing.[41] The Commission noted this failure on PacifiCorp's part in its Initial Order in Docket No. UE-110070:

> Although it appears PacifiCorp adhered to the letter of the Commission's procedural rules governing discovery, it nevertheless is a matter of some concern that the Company did not disclose any information about the California contracts when the regulatory contingency was removed from them and they became fully effective. It would be no more than pure speculation at this point to consider what impact, if any, such disclosure might have had on the Settlement or the Commission's consideration of it. PacifiCorp knew, however, that this was an issue of some significance to at least some parties, and should have known it is a matter of significance to the Commission. The Commission must rely to some degree on the good faith effort of the companies it regulates to be forthcoming with information even when not legally compelled to do so. That effort appears to have been lacking in this instance, a shortcoming the Commission would expect to see corrected if similar circumstances arise again.[42]

25. In sum, PacifiCorp's failure to disclose REC sales information in the 2009 rate case runs contrary to the Commission's stated "paramount interest in having a full record with the best available evidence upon which to base its decisions."[43] The Company's actions also amount to just the type of "gamesmanship" that the Supreme Court of Utah warned against.

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[41] Exh. No. DWS-14, ¶ 23. *See also* Exh. No. DWS-15, ¶ 15.
[42] *Washington State Attorney General's Office and ICNU v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket No. UE-110070, Initial Order Dismissing Complaint (Order 01), ¶ 55.
[43] *WUTC v. Puget Sound Energy, Inc.*, Docket Nos. UE-072300/UG-072301 (consolidated), Order No. 08, ¶ 10 (May 5, 2008).

b. PacifiCorp has continued to withhold information about REC sales in this case.

26. As described below, PacifiCorp's ongoing unwillingness to provide parties with accurate information regarding REC sales and revenues is indicative of the Company's failure to disclose information pertinent to the rate-setting process.

27. Throughout this case, Public Counsel has sought to obtain copies of all REC contracts, regardless of whether the contracts are contingent, or whether the Company believes that they relate to Washington operations. This information is relevant since the Company's initial proposal was to reflect zero REC revenue in rates, and because the Company's method for allocating RECs and REC revenue among various states was at issue.[44] To this end, Public Counsel has issued numerous data requests seeking all REC sales contracts.

28. On October 28, 2010, Public Counsel issued Data Request No. 155 asking for "all contracts for the sale of RECs entered into by PacifiCorp from January 1, 2008 to date," regardless of delivery date, generation date, or jurisdiction.[45] The request also stated that it was continuing in nature and should be supplemented as necessary. PacifiCorp responded, providing a number of redacted contracts and not indicating that there were any additional contracts not being provided.[46] On August 25, 2011, PacifiCorp sent a supplemental response to Data Request No. 155 that did not contain any additional REC contracts.[47]

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[44] *See* Exh. No. DWS-5CT, pp. 2:1-4:21 (Schoenbeck Phase II Responsive).

[45] Exh. No. RBD-31.

[46] Also on October 28, Public Counsel issued Data Request No. 156, which asked for all REC sales offers received by PacifiCorp during 2008, 2009, or 2010. The Company responded with an objection and did not provide any information. *See* Exh. No. RBD-32.

[47] Exh. No. DWS-18.

29. While Data Request No. 155 was outstanding, Public Counsel sent another data request (No. 184) to confirm that it had, indeed, received all REC sales contracts.[48] To be safe, Public Counsel asked a second data request at the same time (No. 185), asking the Company to "provide any contracts not provided in Data Request No. 184 for any reason."[49] In response, PacifiCorp stated that all REC sales contracts applicable to rate base in Washington have been provided previously and that "[t]here are no additional contracts."[50]

30. In a further effort to ensure that it had received all REC sales contracts, Public Counsel sent yet another data request on August 11, 2011 (No. 189), again requesting all REC sales contracts entered into by PacifiCorp during or after 2009, regardless of whether the underlying resource was in Washington rate base.[51] PacifiCorp's response to this data request stated:

> The Company objects to this request on the basis that it is argumentative and requests information related to jurisdictions not relevant to this proceeding. Without waiving this objection, the Company response as follows: All REC contracts have been provided.[52]

31. Despite all of its previous statements that all REC contracts had been provided and that there were no other contracts, on August 29, 2011, PacifiCorp sent a supplemental response to Data Request No. 189 indicating that, in fact, it had *not* provided all contracts and that there were additional contracts that it had previously withheld.[53] The Company offered no explanation as to why these contracts had not been provided in any previous response.

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[48] Exh. No. RBD-33. This data request asks for all REC sales contracts, whether final or contingent regardless of resource location or control area.
[49] Exh. No. RBD-34.
[50] *Id.*
[51] Exh. No. RBD-37, p.1.
[52] *Id.*
[53] *Id.* at 2.

32. There is no way for Public Counsel to be assured that, even at this juncture, it has received all REC sales contracts since the Company has, on at least three occasions, inaccurately stated that all contracts had been provided.

c. The Utah Commission and parties in Utah and Oregon have also raised concerns regarding PacifiCorp's concealment of REC sales information.

33. The Public Service Commission of Utah recently expressed concerns regarding potential concealment of REC sales information by PacifiCorp. On April 20, 2011, the Utah Industrial Energy Consumers (UIEC) filed an application requesting deferred accounting of 2009 and 2010 REC revenues for later ratemaking treatment, alleging that PacifiCorp had failed to provide timely, accurate, and specific information as to its 2009 REC sales and revenues.[54] In denying PacifiCorp's Motion to Dismiss the UIEC application, the Commission stated:

> This case presents allegations of unforeseen and extraordinary events producing an extraordinary windfall for the Company. We further have allegations the windfall, or at least the timing of UIEC's ability to challenge it, *may be at least partially the result of the Company's alleged knowing failure to disclose to the Commission relevant information in prior rate cases*. Under these circumstances, we have a duty to investigate UIEC's allegations.[55]

The matter was later resolved by settlement.[56]

34. In May, 2011, the Utah consumer advocate expressed a similar concern in a then-pending general rate case: "By the time of hearings in the last general rate case, and possibly by the time

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[54] *In the Matter of the Application of the Utah Industrial Energy Consumers for a Deferred Accounting Order Directing Rocky Mountain Power to Defer Incremental REC Revenue for Later Ratemaking Treatment*, Docket No. 11-035-46, Order Denying Motion to Dismiss, p. 4 (June 20, 2011), *available at* http://www.psc.state.ut.us/utilities/electric/ordersindx/documents/731071103547odmtd.pdf (last visited Oct. 31, 2011) (hereinafter *PSCU REC Order*).
[55] *Id.* at 7.
[56] *See* Public Service Commission of Utah, Docket No. 10-035-124 et al., *Report and Order* (Sept. 13, 2011), p. 16, *available at* http://www.psc.utah.gov/utilities/electric/elecindx/2010/documents/21001410035124RO.pdf (last visited Oct. 31, 2011).

it filed the rebuttal testimony in that case, the Company would have been aware of the substantial increase in the price per REC that was occurring, yet it chose not to inform the parties of this information either prior to or during the hearings in that case."[57]

35. This concern also recently arose in Oregon. In a 2009 transition adjustment mechanism (TAM) filing, ICNU noted that PacifiCorp did not account for revenues that the Company received from at least one REC contract in its final TAM updates. ICNU also noted that PacifiCorp also excluded an entire contract from its updates.[58]

36. As can be seen, PacifiCorp's failure to disclose REC information in Washington is not an isolated incident. While experience in other states is not proof of the Company's conduct here, it supports a serious examination of its actions.

2. The exception to the rule against retroactive ratemaking for extraordinary and unanticipated revenues applies in this case.

37. Numerous courts and commissions have recognized an exception to the rule against retroactive ratemaking in situations where a utility experiences extraordinary and unforeseeable losses or gains.[59] This Commission has applied this exception to allow recovery of past expenses in certain circumstances, explaining:

> The Commission notes that it has on rare occasions authorized the recovery of past expenses in instances where doing so is consistent with the public interest and sound regulatory theory. Expensing of investment in abandoned plant, for example; amortization of rate case expense; legal fees; recovery of extraordinary

[57] *See In the Matter of the Application of Rocky Mountain Power for Authority to Increase it Retail Electric Service Rates,* Docket No. 10-035-124, Direct Revenue Requirement Testimony of Donna Ramas for the Office of Consumer Services (May 26, 2011), p. 31, *available at* http://www.psc.state.ut.us/utilities/electric/elecindx/2010/10035124indx.html (last visited Oct. 31, 2011).
[58] *See In the Matter of the Application of the ICNU for a Deferred Accounting Order Regarding Certain Power Costs and Revenues*, ICNU Application, Docket No. UM-1465 (Dec. 31, 2009), *available at* http://edocs.puc.state.or.us/efdocs/HAA/um1465haa145155.pdf (last visited Oct. 31, 2011).
[59] *See generally* Krieger at 1003-1007.

weather-related expenses; and similar matters are approved by this commission and others.[60]

As discussed below, this exception applies here because the REC revenues at issue were both extraordinary and unforeseeable.

a. PacifiCorp's 2009 and 2010 REC revenues were "extraordinary".

38. Courts and Commissions have enunciated different definitions of "extraordinary" for purposes of this exception. However, all of these definitions reflect two essential elements, specifically, that the item at issue must be both substantial and non-recurring.[61] Here, PacifiCorp's 2009 and 2010 REC revenues were substantial and non-recurring.

39. The record shows that the 2009 and 2010 REC revenues were substantial. The level of REC revenues that PacifiCorp began receiving in October 2009 were nearly **[Begin Confidential]** XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXX.[62] XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXX. **[End Confidential]**

[60] *WUTC v. Puget Sound Power & Light Co.*, Docket No. U-81-41, Sixth Suppl. Order, p. 19 (internal citations omitted).
[61] *See* Krieger at 1003-1007. The Commonwealth Court of Pennsylvania summarized these elements by holding that "a substantial item that will not appear as a continuing expense" and would otherwise "be normalized out" may be extraordinary. *Popowsky v. Pa. Pub. Serv. Comm'n*, 642 A.2d at 642, 652 (Pa. 1994).
[62] Confidential compliance filing on behalf of PacifiCorp from Andrea Kelly, RE: compliance with paragraphs 206, 208 and 384 of Order 06, Confidential Attach.1, p. 1.

40. PacifiCorp acknowledges the magnitude of the revenues at issue. In her rebuttal testimony, Ms. Kelly states, "to provide perspective, the magnitude of Staff's and ICNU/PC's recommended credit to customers in this proceeding [i.e., 2009 and 2010 REC revenues] exceeds the entire rate increase that was authorized in the Stipulation in Docket No. UE-090205."[63] In addition, the Utah Commission recently declared that PacifiCorp's 2009 and 2010 REC revenues were a "windfall" to the Company.[64]

41. Second, the level of REC revenues that the Company received in 2009 and 2010 is also non-recurring. PacifiCorp has repeatedly stated that it does not expect to receive revenues at 2009 and 2010 levels indefinitely,[65] and that the prices reflected in the California contracts that precipitated the 2009 jump in revenues were secured prior to changes in the California REC market.[66] The Company also points out that, once Washington's RPS standards go into effect, the Company anticipates selling far fewer Washington-allocated RECs.[67] Finally, the Company has repeatedly removed actual test period revenues from its rate case filings because they are non-recurring, i.e., normalized its test period revenues to remove actual REC revenues.[68]

b. The REC revenues at issue were "unforeseeable".

42. No party other than PacifiCorp could have foreseen the magnitude of REC revenues that the Company began receiving in October 2009. The Utah Supreme Court confronted a similar

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[63]Exh. No. ALK-2CT, p. 7:2-5 (Kelly Phase II Rebuttal).
[64] *PSCU REC Order* at 7.
[65] *See, e.g.*, Exh. No. RBD-1T, pp. 9-10 (explaining that the Company's initial proposed restating adjustment removed all REC revenues from the test period because the Company "is banking all eligible RECs generated during the twelve-months ending March 31, 2012); Exh. No. SJK-1CT, pp. 5:2-7:21 (Kusters Phase II Direct) (explaining the disruption of the California market and the drop in available REC markets and prices).
[66] *See* Exh. No. SJK-1CT, pp. 5:14-7:15 (Kusters Phase II Direct).
[67] *See e.g.,* Exh. No. RBD-1T, pp. 9-10 (Dalley Direct).
[68] *Id. See also WUTC v. PacifiCorp d/b/a Pacific Power & Light Co.,* Docket No. UE-090205, Exh. No. RBD-1T, p. 14 (Dalley Direct).

situation in *MCI Telecom. v. Pub. Serv. Comm'n of Utah.*[69] In *MCI,* a customer representative filed a complaint requesting refund of past revenues that U.S. West had earned due to a reduction in its federal income tax rate that occurred upon passage of the Tax Reform Act of 1986 (the Act).[70] U.S. West argued that the exception for unforeseeable revenues did not apply because the Commission was aware of the change in its tax rate.[71] The Commission ruled in favor of U.S. West, stating that the Act was foreseeable and that it had foreseen the potential impact of the Act.[72] However, the Court overturned the Commission decision. The Court held that, although the Commission foresaw the effect of the Act and change in U.S. West's tax rate, the exception for unforeseeable revenues did apply because the Commission had not foreseen the full extent of the impact:

> Even if we agreed with the Commission that it foresaw the effect of the tax reduction and took action to remedy it..., it is clear that the Commission did not understand the full effect of the Act with sufficient clarity to remedy U.S. West's overearnings. Whether that failure was a result of U.S. West's failure to disclose relevant financial data and projections promptly should be explored on remand.[73]

43. In this case, neither the REC reports mandated by Docket No. UE-090205, nor information provided through discovery in the 2009 general case, revealed the possibility that PacifiCorp would begin receiving extraordinarily high REC revenues in October 2009. As shown in Table 1 below, the REC reports provided information only up to six months prior to the date of the report.

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[69] 840 P.2d 765 (Utah 1992).
[70] *Id.* at 767-769.
[71] *Id.* at 772.
[72] *Id.*
[73] *Id.*

Table 1: Dates and Coverage of REC reports[74]

Date the report was sent to parties	Time span of information contained in the report
December 31, 2009	January 2005 – June 2009
February 12, 2010	Revised –January 2005 – June 2009
July 28, 2010	**January 2009 – March 2010**
October 29, 2010	April 2010 – June 2010
February 1, 2011	July 2010 – September 2010
April 29, 2011	January 2010 – December 2010
May 13, 2011	Revised January 2010 – December 2010
May 24, 2011	January 2009 - December 2010

Thus, it was not until July 28, 2010, that the REC reports showed the jump in revenues that occurred in October, 2009. This was over seven months after the Final Order was issued in the 2009 general rate case, and nearly three months after the Company filed this case.[75] This lag in information meant that non-Company parties were not aware of the October 2009 revenues until well after conclusion of the 2009 case and the start of the current case. In addition, the sales contracts showing the actual sales prices and volumes were not provided to parties until well into this case.[76]

3. The public interest requires that Washington ratepayers receive full value for RECs generated from their share of WCA resources during 2009 and 2010.

44. The rule against retroactive ratemaking is an equitable doctrine, and exceptions to the rule may be made when doing so is consistent with the public interest and sound regulatory

[74] *See* Exh. No. RBD-35.
[75] The Commission's Final Order (Order 09) in Docket No. UE-090205 was issued December 16, 2009. The Company filed this rate case on May 4, 2010.
[76] *See* Exh. No. DWS-13, p. 9.

theory.[77] In this case, the public interest would be served by returning 100 percent of the value of 2009 and 2010 Washington-allocable RECs to Washington ratepayers.

45. As previously discussed, PacifiCorp's customers are entitled to all revenues from the sale of RECs since they have paid the full cost of all resources from which RECs are generated. Allowing PacifiCorp to retain any REC revenues would unjustly enrich the Company at ratepayers' expense.

46. In addition, allowing PacifiCorp to retain any 2009 or 2010 REC revenues would undermine the integrity of this Commission's rate-setting process. First, it would reward the Company for failing to disclose relevant information in both the 2009 general rate case and this case. It would also encourage similar behavior in future cases as the Company would have a monetary incentive to withhold information regarding its current and future revenues. Finally, failing to credit customers 2009 and 2010 REC revenues would reward the exact type of gamesmanship that the Supreme Court of Utah warned against in the *Salt Lake* case.

C. PacifiCorp's Additional Arguments Against Returning 2009 and 2010 REC Revenues are Meritless.

47. PacifiCorp offers a number of additional arguments against including 2009 and 2010 REC revenues in the credit calculation. As explained below, these arguments should be disregarded.

[77] *WUTC v. Puget Sound Power & Light Co.*, Docket No. U-81-41, Sixth Suppl. Order, p. 19 (internal citations omitted). As articulated by the Wyoming Supreme Court, the "specter of retroactive ratemaking must not be viewed as a talismanic inhibition against the application of principles based upon equity and common sense." *PacifiCorp v. Public Service Commission of Wyoming*, 103 P.3d 862, 875 (Wyo. 2004) (citation omitted). *See also Narragansett Elec. Co. v. Burke*, 415 A.2d 177, 178 (R.I. 1980) (stating that the rule against retroactive ratemaking should not be "blindly applied… without prior consideration of the underlying policy that originally precipitated its adoption").

1. PacifiCorp's 2009 and 2010 returns on equity are irrelevant to ratepayers' entitlement to all 2009 and 2010 REC revenues.

48. The Company argues that it should not be required to return to ratepayers 2009 and 2010 REC revenues because its actual return on equity (ROE) during those years was lower than the Commission-approved return.[78] On the same ground, the Company argues that crediting customers with REC revenues would impact its ability to earn its authorized rate of return in whatever period the credit is ordered and/or paid.

49. Whether PacifiCorp actually earned its authorized return on equity during 2009 and 2010 is irrelevant to whether this Commission may order the Company to credit customers REC revenues received during those periods. It is well-established that a utility is entitled only to the opportunity to earn a reasonable return on its investment; the law does not insure that it will in fact earn the particular rate of return authorized by the Commission, or indeed that it will earn any net revenues.[79] As Ms. Breda testified, PacifiCorp's alleged failure to earn its authorized return in prior periods provides no basis for denying ratepayers revenues to which they are entitled. Ms. Breda states: "The Commission orders are clear that REC revenues belong to ratepayers. The Commission has not imposed an earnings test as a prerequisite."[80]

50. The Utah Public Service Commission recently rejected this argument in a similar case in that state. PacifiCorp had filed a motion to dismiss an application by industrial customers for deferred accounting of 2009 and 2010 REC revenues for later ratemaking treatment.[81]

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[78] *See* Exh. No. ALK-1T, pp. 5:11-20 and 8:21 – 9:3 (Kelly Phase II Direct).
[79] *See Power Comm'n v. Pipeline Co.*, 315 U.S. 575, 590 (1942); *Bluefield Co. v. Pub. Serv. Comm'*, 262 U.S. 679, 692-693 (1923).
[80] Exh. No. KHB-7TC, p. 13:1-5 (Breda Phase II Responsive).
[81] *See PSCU REC Order* at 2.

PacifiCorp (d/b/a Rocky Mountain Power) argued that exceptions to the rule against retroactive ratemaking were only available to address increased revenues when, and to the extent that, the Company had over-earned, and therefore the Commission could not address 2009 and 2010 revenues. The Commission rejected this argument, stating that it was not persuaded that a remedy was unavailable simply because the Company may not have been over-earning during 2009 and 2010.[82]

51. Contrary to the impression that PacifiCorp seeks to give with this argument, PacifiCorp's earnings appear to have been quite robust during 2009 and 2010. In 2009, the net income attributable to PacifiCorp was $542 million, which was an increase of $84 million, or 18 percent, as compared to 2008.[83] In 2009, PacifiCorp made all of its anticipated quarterly dividend payments, totaling over $2 million.[84] PacifiCorp's net income increased again in 2010, this time by $24 million to $566 million.[85] And again, PacifiCorp made all of its quarterly dividend payments.[86]

52. It is also notable that, the situation at hand is of the Company's own making. Had PacifiCorp been forthcoming about REC sales and revenues, the Commission could have addressed them at an earlier point in the rate-setting process. However, since the Company chose to withhold information regarding REC sales, those revenues must be addressed at this time.

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[82] *See id* at 8.
[83] Exh. No. ALK-5.
[84] Exh. No. ALK-4.
[85] Exh. No. ALK-5.
[86] Exh. No. ALK-4.

2. Crediting customers for 2010 REC revenues will not create a disincentive for PacifiCorp to manage its costs.

53. PacifiCorp witness, Andrea Kelly, states that crediting customers for 2010 REC revenues will create a "significant disincentive for taking initiates to manage costs and revenues as an integrated business."[87] The Commission should disregard this argument.

54. In discovery, Ms. Kelly was asked to provide examples of what cost and revenue management initiatives PacifiCorp would forego if the Company was required to credit customers for 2010 REC revenues. Ms. Kelly's response states: "PacifiCorp is not asserting that it may not undertake initiatives to manage costs and revenues."[88]. Moreover, PacifiCorp is required to manage its costs efficiently as only prudent costs are recoverable from ratepayers.[89]

IV. CALCULATION OF 2009 AND 2010 REC REVENUES

55. To properly calculate the amount of 2009 and 2010 Washington REC revenues to credit ratepayers, value must be imputed for RECs, allocable to Washington, but retained for compliance in other states.[90] Otherwise, ratepayers would be paying their share of 100 percent of costs of resources that generate RECs, but would receive less than their share of 100 percent

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[87] Exh. No. ALK-1T, pp. 5:23-64 (Kelly Phase II Direct).

[88] Exh. No. ALK-6.

[89] *See People's Organization for Washington Energy Resources v. WUTC,* 711 Wash.2d 798, 810-11 (1985). Indeed, PacifiCorp testified in a Utah proceeding addressing REC revenues that its objective is to minimize the costs of the underlying assets would not be impacted by an order requiring it to credit REC revenues to customers. *See In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Service Rates,* Docket No. 10-035-124 et al., Report and Order (Sept. 13, 2011), p. 33, *available at* http://www.psc.utah.gov/utilities/electric/elecindx/2011/documents/21001410035124RO.pdf (last visited Oct.28, 2011).

[90] *See* Exh. No. DWS-5CT, p. 5:17-20 (Schoenbeck Phase II Responsive).

of REC revenues.[91] In other words, Washington ratepayers would in effect be subsidizing PacifiCorp's compliance with other states' RPS standards.

A. Some, But Not All, Amendments Offered by Staff and PacifiCorp Should be Made to ICNU/Public Counsel's Calculation of 2009 and 2010 Revenues.

56. In Phase II cross-answering and rebuttal testimony, Staff and PacifiCorp recommend amendments to the calculation of 2009 and 2010 REC revenues offered by Mr. Schoenbeck.[92] As discussed below, Public Counsel accepts some, but not all, of these amendments. In total, the amendments that Public Counsel accepts increase its recommended REC revenue for 2009 by **[Begin Confidential]** XXXX **[End Confidential]** and decrease its recommended REC revenue for 2010 by **[Begin Confidential]** XXXXXX. **[End Confidential]**

1. Staff and PacifiCorp correctly point out that calculation of 2010 revenues should be offset for the amount of REC revenues previously established in rates; the same does not apply for 2009 revenues.

57. Both Staff[93] and PacifiCorp[94] note that ICNU/Public Counsel's calculation of 2010 REC revenues should be amended to reflect the amount of REC revenues established in the 2009 general rate case. Public Counsel agrees with this amendment, which reduces ICNU/Public Counsel's recommended 2009 REC revenues by **[Begin Confidential]** XXXXXX **[End Confidential]**

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[91] As shown in Exh. No. DWS-6C, the difference between the number of RECs generated and the number of RECs sold is substantial.

[92] Staff and ICNU/Public Counsel recommend that 2009 and 2010 REC revenues be calculated in fundamentally the same manner. Centrally, both Staff and ICNU/Public Counsel start with actual generation from all WCA resources and imputing to Washington those RECs that the Company held for Compliance but which are attributable to Washington. In 2009, Washington ratepayers paid 22.139 percent of all costs associated with WCA resources. Thus, Staff and ICNU/Public Counsel both recommend that Washington ratepayers receive credit for revenues from 22.139 percent of all WCA-generated RECs, regardless of whether the Company chose to sell or hold those RECs for compliance in other states.

[93] *See* Exh. No. KHB-9TC, p. 2:7-9 (Breda Phase II Cross-Answering).

[94] *See* Exh. No. RBD-28CT, p. 15:17-22 (Dalley Phase II Rebuttal).

58. Additionally, PacifiCorp argues that the calculation of 2009 REC revenues should be reduced by $576,254 as an "offset for the amount included in rates through the Company's 2008 rate case filing in Docket No. UE-080220."[95] This argument is not correct. The Company relies on the proposed pro forma adjustment for REC revenues that it included in its initial 2008 filing. However, that case was resolved through a "black box" settlement.[96] Neither the settlement, nor the Commission's order approving the settlement, identified specific components of the increase.[97] Moreover, the settlement included an overall increase that was well below the Company's requested increase[98] Thus, it is both improper and impossible to determine what, if any, amount of REC revenue was actually reflected in 2009 rates.

2. PacifiCorp's corrections to 2010 revenues to reflect the updated Control Area Generation West (CAGW) factor and its correction for 2009 actual RECs sold are proper.

59. In his Phase II Rebuttal Testimony, Mr. Dalley notes that the 2010 CAGW factor, which Mr. Schoenbeck relied on for his calculation of 2010 revenues, needs to be updated to reflect the Commission-ordered removal of the temperature normalization of the customer class.[99] This update properly reflects the Commission's decision in Order 06 and should be accepted. Applying the updated CAGW factor increases ICNU/Public Counsel's recommended 2010 REC revenue by **[Begin Confidential]** XXXXX. **[End Confidential]**

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[95] *See* Exh. No. RBD-28CT, pp. 15:22-16:6 (Dalley Phase II Rebuttal). *See also* Exh. No. ALK-2CT, p. 7:6-16 (Kelly Phase II Rebuttal).
[96] *See WUTC v. PacifiCorp, d/b/a Pacific Power & Light,* Docket No. UE-080220, Pre-Filed Joint Testimony Supporting Settlement Stipulation, p. 13:6.
[97] *See generally id.*
[98] *See WUTC v. PacifiCorp, d/b/a Pacific Power & Light,* Docket No. UE-080220, Final Order (Order 05) and Attachment (Settlement Stipulation), ¶¶ 8 and 11.
[99] Exh. No. RBD-28CT, pp. 17:23-18:5 (Dalley Phase II Rebuttal).

60. Mr. Dalley states in his Phase II Rebuttal Testimony that ICNU/Public Counsel's calculation of 2009 revenues understates the number of actual non-eligible RECs sold.[100] Correcting this calculation to reflect the correct level of sales increases ICNU/Public Counsel's calculation of 2009 revenues by **[Begin Confidential]** XXXX. **[End Confidential]** Public Counsel accepts this correction.

B. PacifiCorp's Argument that 2009 and 2010 REC Revenues Should Reflect Sales of Less Than All Wind RECs Should be Rejected.

61. Public Counsel/ICNU calculate 2009 and 2010 revenues based on the assumption that PacifiCorp sold 100 percent of wind RECs generated during those years.[101] PacifiCorp rejects this assumption.[102]

62. The Commission should base its calculation of imputed 2009 and 2010 wind REC revenues on an assumption that 100 percent of RECs were sold for several reasons. First, calculation of imputed revenue is necessary to give value to Washington ratepayers for RECs held by the Company for compliance in other states. Using a REC for compliance with RPS relies on that REC's value, in the same manner as a sale of that REC. Since only RECs held for compliance are being dealt with here, their full value should be realized.

63. Second, ICNU/Public Counsel's calculations for these years starts with the number of RECs generated in each of these years. This means that each year's calculation only captures

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[100] Exh. No. RBD-28CT, p. 18:8-13 (Dalley Phase II Rebuttal).

[101] Staff's and ICNU/Public Counsel's calculations of 2009 revenues differ in two other respects as well. In total, these differences result in Staff recommending Washington ratepayers be credited **[Begin Confidential]** XXXX **[End Confidential]** *more* revenue for 2009 and **[Begin Confidential]** XXXXXX **[End Confidential]** *less* for 2010. *See* Exh. No. KHB-9TC, p. 4:14-17 (Breda Phase II Cross-Answering).

[102] *See* Exh. No. RBD-28CT, pp. 18:14 – 19:7 (Dalley Phase II Rebuttal). Staff bases its calculations on the lesser percent sold. However, Staff states that "[b]oth Staff and PC/ICNU's assumptions are reasonable." *See* Exh. No. KHB-9TC, p. 4:2-6 (Breda Phase II Cross-Answering).

revenues from those RECs generated in that year. However, there is also a market for RECs generated in previous periods. Fore example, PacifiCorp may sell a wind REC, generated in 2009 in 2010. Thus, while PacifiCorp's actual experience might be to only sell **[Begin Confidential]** XX **[End Confidential]** percent of RECs generated in 2009 in that year, it might later sell and receive revenue from the **[Begin Confidential]** X **[End Confidential]** percent of remaining RECs generated in 2009 through sales made in 2010 or beyond. ICNU/Public Counsel's 2009 revenue calculation will only properly reflect value for 2009 and 2010 wind RECs generated in one period and sold in a later one if the calculation assumes sale of all RECs rather than the **[Begin Confidential]** XX **[End Confidential]** percent sold by the Company in each of those years. Finally, it would be the prudent course of action for PacifiCorp to sell 100 percent of RECs and maximize the value of these assets for ratepayers.

V. BILL CREDIT MECHANISM

64. Staff, ICNU, and Public Counsel all recommend changes to the bill credit mechanism established in Order 06.[103] These parties' primary recommendation is that the amount of the credit be based on actual REC revenues already received, rather than on a forecast or projection of future revenues. The Commission should accept this recommendation.

65. Basing the credit amount on the actual accumulated revenue in the tracking account instead of on the Company's forecast is necessary to prevent the accumulation of a cash balance in an interest-bearing account that must ultimately be recovered from customers. The Commission recently addressed such a situation in Docket No. UE-091703.[104] In that case, PSE

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[103] *See* Exh. No. KHB-7TC, pp. 10-11 (Breda Phase II Responsive); Exh. No. DWS-5CT, pp. 8-9 (Schoenbeck Phase II Responsive).
[104] *See WUTC v. Puget Sound Energy Inc.,* Docket No. UE-091703, Final Order (Order 02), ¶ 3.

had credited customers production tax credits (PTCs) based on what it had projected receiving during the credit year.[105] As these credits declined, the Company accumulated a negative balance in the PTC account. Ultimately, PSE had to collect from customers both the amount of the negative balance and the interest that had accrued on that balance.[106]

66. In this case, it is proper to craft the bill credit mechanism so as to prevent accumulation of such a negative balance. In addition, as Ms. Breda explains, relying on actual revenues rather than projections is proper given the apparent unpredictable nature of these revenues and the fact that the Company's prior forecasts have been "poor".[107]

67. The Company's arguments against relying on actual revenues are without merit. First, Ms. Kelly states that there is no basis for changing from forecast to actual because no party took issue with the Company's forecasts previously.[108] This is simply not true. ICNU witness, Randall Falkenberg, pointed out in his testimony the vast difference between the Company's proposed pro forma adjustment reflecting no REC revenues, compared to what the Company would likely actually receive.[109] Staff witness, Mr. Foisy, similarly testified to the difference between the Company's projected rate effective period REC revenues of $0 as compared to the $4.7 million that it actually earned during the test year.[110] Finally, Public Counsel provided a table in its Post-Hearing Brief showing the amount of REC revenue PacifiCorp proposed to

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[105] *See WUTC v. Puget Sound Energy Inc.,* Docket No. UE-091703, Initial Filing, p.1.
[106] *See WUTC v. Puget Sound Energy Inc.,* Docket No. UE-091703, Initial Filing, p 2.
[107] Exh. No. KHB-7TC, pp. 10:17-11:8 (Breda Phase II Responsive). The second change recommended by Staff, ICNU, and Public Counsel is that the credit amount, set in Schedule 95, should remain the same until the balance is insufficient to continue credits for the next year. This change would seek to minimize the size of potential negative balances in the tracking account. Exh. No. DWS-5CT, p. 9:9-12 (Schoenbeck Phase II Responsive).
[108] Exh. No. ALK-2CT, p. 11:1-12 (Kelly Phase II Rebuttal).
[109] Exh. No. RJF-1CT, pp. 61-63 (Falkenberg Responsive).
[110] Exh. NO. MDF-1CT, pp. 11-12 (Foisy Responsive).

reflect in rates annually since 2005 as compared to the amount the Company actually earned in each year.[111]

68. Second, Ms. Kelly argues against the parties' proposed change because it is not clear how the Company would transition from using forecasts to actuals.[112] This is also incorrect. Transitioning from forecast to actual REC revenues could be easily accomplished since, as Staff, ICNU, and Public Counsel all recommend, the current credit amount would stay in place.[113]

VI. CONCLUSION

69. For the foregoing reasons, Public Counsel respectfully requests that the Commission order PacifiCorp to credit Washington ratepayers 100 percent of the value of 2009 and 2010 Washington-allocated REC revenues. In addition, with the few amendments discussed previously, the Commission should adopt the calculation of 2009 and 2010 REC revenues credits proposed by ICNU/Public Counsel witness, Mr. Schoenbeck. Finally, the Commission should amend the bill credit mechanism so as to base the credit amount on the actual rather than forecasted REC revenues.

70. DATED this 4th day of November, 2011.

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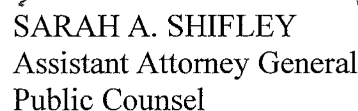

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[111] Post-Hearing Brief of Public Counsel, ¶ 61 (Table 1: Historic Washington REC Revenue).
[112] Exh. No. ALK-2CT, p. 11:1-12 (Kelly Phase II Rebuttal).
[113] *See* Exh. No. KHB-7TC, pp. 10-11 (Breda Phase II Responsive); Exh. No. DWS-5CT, pp. 8-9 (Schoenbeck Phase II Responsive).