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

THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

REDACTED VERSION

November 4, 2011

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I. INTRODUCTION

1 Pursuant to WAC § 480-07-390 and the July 8, 2011 Prehearing Conference Order, the Industrial Customers of Northwest Utilities ("ICNU") hereby submits this opening brief in Phase II of this proceeding requesting that the Washington Utilities and Transportation Commission ("WUTC" or the "Commission") adopt a renewable energy credit ("REC") tracking mechanism that appropriately passes through to ratepayers the value of all RECs attributed to Washington starting in January 1, 2009. The Commission should adopt ICNU and Public Counsel witness Don Schoenbeck's REC tracking mechanism, because Washington ratepayers have paid the full costs of PacifiCorp's renewable resources located in PacifiCorp's western control area ("WCA"), and therefore should receive the full value of all REC credits generated from these resources.

2 The Commission should reject PacifiCorp's proposal to keep all REC revenues received prior to April 2011. Contrary to PacifiCorp's arguments, the rule against retroactive ratemaking does not bar the Commission from adopting the recommendations of Mr. Schoenbeck or Staff witness Kathryn Breda. The REC revenues at issue in this proceeding began on January 1, 2009, which is the beginning of the test period in this proceeding. The Commission may make an accounting adjustment that tracks and returns to ratepayers all REC revenues that were generated during the test period of any rate related proceeding. In addition, the rule against retroactive ratemaking does not bar the Commission from requiring a utility to return revenues that were inaccurately forecast because the utility mislead or failed to disclose

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material information. PacifiCorp should not be allowed to unjustly benefit by subverting the regulatory process and retain monies by providing misleading and inaccurate information.

3 The Commission should also reject PacifiCorp's proposed one-sided method for calculating REC revenues, as it does not provide Washington any value associated with those RECs generated by WCA resources, but rather are "banked" to satisfy other states' renewable portfolio standards ("RPS"). Washington ratepayers should be allocated a full share of all REC revenues associated with those resources included in Washington rates. In addition, PacifiCorp's proposed REC tracking mechanism should be modified to ensure that ratepayers obtain 100% of the value of all RECs generated in the WCA, and that the REC credit tariff should be maintained and reset when the balance is insufficient to continue credits to avoid the possibility negative balances.

II. BACKGROUND

4 The Commission has recently addressed a number of key issues related to RECs in a Puget Sound Energy, Inc. ("PSE") proceeding that should be applied here.[1/] The Commission determined that REC benefits should be returned to ratepayers, because they are burdened with the responsibility of paying sufficient rates for PSE to recover the costs of the resources that generate RECs.[2/] Although ICNU disagreed with PSE's proposal to retain some RECs for shareholders, PSE was up front with customers and the Commission about the dollars

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1/ 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 ¶¶ 41-47 (May 20, 2010) (recognizing that, absent unusual or extraordinary circumstances, REC revenues should be credited to ratepayers).

2/ Id. at ¶ 59.

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at issue related to REC revenues.[3/] PSE, in contrast to PacifiCorp, actually sought and filed a deferred account to track and return RECs to ratepayers in early 2007, well before PSE entered into the most valuable REC related contracts.

5 The issue of PacifiCorp's REC revenues was recently addressed in the Company's 2009 general rate case (Docket No. UE-090205) ("2009 GRC") and in a complaint proceeding filed by ICNU and Public Counsel (Docket No. UE-110070). PacifiCorp's 2009 GRC filing claimed that the Company expected to earn $657,775 in Washington allocated REC revenues, although the Company was well aware that it would earn far more over the test period. PacifiCorp provided incomplete and misleading data responses in the 2009 GRC, and the Company failed to inform the parties of key REC contracts. Based on incomplete and inaccurate information, the parties entered into a settlement of all issues in the 2009 GRC specifically recognizing the $657,775 REC revenue amount.[4/]

6 ICNU and Public Counsel filed a joint complaint on January 7, 2011, alleging that PacifiCorp violated the law when it failed to provide accurate information regarding its forecasts of REC revenues in the 2009 GRC. The Commission dismissed the complaint, finding that it was untimely and sought remedies that could not be ordered.[5/] The ALJ concluded that while "it appears that PacifiCorp adhered to the letter of the Commission's procedural rules governing discovery," PacifiCorp did not act in "good faith" when it failed "to be forthcoming with

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[3/] See id. at ¶ 5.
[4/] WUTC v. PacifiCorp, Docket No. UE-090205, Order No. 09 ¶¶ 37-42 (Dec. 16, 2009).
[5/] Washington State Attorney General's Office and ICNU v. PacifiCorp, Docket No. UE-110070, Order 01, Initial Order Dismissing Complaint ¶ 56 (Apr. 27, 2011).

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information" that was an issue of significance to the parties and the Commission.[6/] In other words, even if PacifiCorp did not provide fraudulent discovery responses, PacifiCorp knew that the $657,775 REC revenue forecast was wildly inaccurate well before the Commission approved the settlement of the 2009 GRC.

7 PacifiCorp filed this proceeding (the 2010 GRC) on May 4, 2010. Although PacifiCorp acknowledged that it expected to earn nearly $5 million in REC revenues, the Company did not include any REC revenues with its initial filling. The Company claimed that it did not include REC revenue because it did not expect to sell any Washington-allocated RECs in anticipation of a legislative amendment to the Washington Renewable Portfolio Standard ("RPS") which would have permitted utilities to bank RECs for longer periods of time for future RPS compliance.[7/] This excuse was disingenuous, since the legislative session had ended on April 12, 2010, without the passage of any RPS amendments, fully three weeks before PacifiCorp made its initial filing on May 4, 2010.[8/]

8 Throughout the 2010 GRC, PacifiCorp provided inconsistent and varying information regarding the amount of REC revenues it would earn, and eventually proposed that rates should account for nearly $5 million in REC revenues.[9/] ICNU proposed that the Commission should make a $10 million adjustment based on the amount of REC revenues that PacifiCorp is expected to actually earn in 2010, and in retrospect this is [redacted]

[6/] Id. at ¶ 55.
[7/] Duvall, Exh. No. GND-5T at 3:10-14.
[8/] Id.; Duvall, TR. 298:4-14 (Phase I Hearing).
[9/] See Duvall, Exh. No. GND-5T at 5:4-6; Dalley, Exh. No. RBD-4T at 10:1-8.

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[redacted].[10/] The Commission eventually adopted a $4.8 million adjustment to establish bill credits for 2011.[11/] The Commission also adopted Staff's recommendation to adopt a REC tracking account detailing all REC proceeds received starting January 1, 2009.[12/] The Commission did not resolve—and requested additional briefing on—the starting date for rate treatment of the RECs and how the REC proceeds should be passed back to ratepayers.[13/]

III. ARGUMENT

A. Returning REC Revenues to Ratepayers Does Not Violate the Rule Against Retroactive Ratemaking

9 The Commission should commence the regulatory REC tracking account and pass back to ratepayers the full value of all PacifiCorp's REC revenues starting on January 1, 2009. PacifiCorp, however, argues that the Commission cannot credit ratepayers any REC revenues prior to April 3, 2011, because it would violate the rule against retroactive ratemaking and be "illegal, inadvisable and unfair."[14/] The rule against retroactive ratemaking is not implicated, since starting the REC revenue credit on January 1, 2009, is consistent with the Commission's traditional approach of making similar accounting adjustments as long as they are within the relevant test period in a rate proceeding. Regardless, the rule against retroactive ratemaking includes exceptions, including allowing adjustments when a utility misleads or fails to disclose

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10/ ICNU Phase I Post-hearing Brief at 20; Breda, Exh. No. KHB-9CT at 4.
11/ WUTC v. PacifiCorp, Docket No. UE-100749, Order No. 06 ¶ 204 (Mar. 25, 2011).
12/ Id. at ¶ 203.
13/ Id. at ¶¶ 206-208.
14/ Kelly, Exh. No. ALK-1T at 9.

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material information to the parties or a commission.[15/] The rule against retroactive ratemaking does not allow a utility to provide inaccurate information and then "shelter a utility's improperly obtained revenues."[16/]

10 The Commission follows the rule against retroactive ratemaking which is a set of principles that are corollaries to the filed rate doctrine and establish that a regulatory agency cannot set rates to allow utilities to recoup past losses or refund consumers excess utility profits.[17/] The Commission recognizes that the rule against retroactive ratemaking, however, is "not so rigid as sometimes viewed" and "[t]here are equally well-established exceptions."[18/] Across the nation, there is no coherent and universal application of the rule, as judicial and state regulatory application have often been contradictory, ad hoc and inconsistent, even within the same jurisdiction.[19/] Due to this wide variety of applications, all parties in the case will be able to find citations to court and administrative proceedings to support their position regarding whether the rule applies to the establishment of a REC tracking account.[20/] The key consideration for the Commission should be whether the REC tracking account is consistent with this Commission's prior decisions and the underlying purposes of the rule against retroactive ratemaking. These principles and precedents do not stand for the proposition that a utility should be rewarded for failing to provide complete and updated discovery responses.

15/ Richter v. Florida Power Corp., 366 So. 2d 798, 800 (Fla. App. 1979); MCI Telecomm. Corp. v. Pub. Serv. Comm'n of Utah, 840 P.2d 765, 775 (Utah 1992).

16/ MCI Telecomm. Corp., 840 P.2d at 775.

17/ Re PacifiCorp, Docket No. UE-020417, Third Suppl. Order ¶ 23 (Sept. 27, 2002).

18/ Id. at ¶ 24.

19/ Stefan Krieger, The Ghost of Regulation Past: Current Applications of the Rule Against Retroactive Ratemaking in Public Utility Commission Proceedings, 1991 ILL. L. REV. 983, 1047 (1991).

20/ E.g., Public Counsel Phase I Posthearing Opening Brief ¶ 69; PacifiCorp Phase I Post-hearing Reply Brief at ¶ 41.

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1. The Commission Has Previously Established Regulatory Tracking Accounts for Large and Unusual Test Period Costs and Benefits

11 Staff's testimony cited numerous proceedings and explained how, in certain circumstances, the Commission has approved recovery of extraordinary or nonrecurring revenues or expenses that would be incurred during the test period of a rate proceeding.[21/] The policy allows the Commission to charge or credit ratepayers prudently incurred costs in a separate tariff.[22/]

12 PacifiCorp has attempted to distinguish Staff's examples by arguing that they mostly resulted from the filing of deferred accounting petitions by the utility, and a deferred accounting filing is necessary to avoid the rule against retroactive ratemaking.[23/] ICNU agrees that the Commission has required utilities to file a deferred accounting petition prior to deferring costs or benefits that will be recovered in a regulatory tracking account, in order to protect and provide legal notice to ratepayers.[24/] These notice requirements, however, do not apply to utilities, because Washington utilities are already aware that extraordinary gains that occur during the rate period can be accounted for in the ratemaking process.[25/]

13 Requiring extraordinary test period gains to be addressed only if a deferral is filed would establish a fundamentally unfair process that would rely upon utilities to file deferral of any extraordinary gains. Staff and intervenors are not typically aware of utilities' gains and losses until the utility files some sort of rate proceeding and discovery ensues. Utilities, in

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21/ Breda, Exh. No. KHB-7CT at 3-5 (citing WUTC decisions).
22/ Id.
23/ PacifiCorp Phase I Post-hearing Reply Brief at 15-17.
24/ WUTC v. Olympic Pipeline Co., Docket No. TO-011472, 20th Suppl. Order ¶ 119 (Sept. 27, 2002); Docket No. UE-020417, Third Suppl. Order ¶¶ 25-27.
25/ E.g., WUTC v. Avista Corp., Docket No. UE-991606, Third Suppl. Order at ¶¶ 39-77 (Sept. 29, 2000).

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contrast, have a significant informational advantage, which they frequently use to file deferrals for unanticipated cost increases, but rarely for unanticipated gains. Thus, the Commission's current asymmetrical policy of requiring utilities to file deferrals to recover unanticipated losses, but allowing Staff and ratepayers to propose regulatory adjustments for certain large and unusual gains is fair, simply because it recognizes the realities of the regulatory process.

14 The factual circumstances of this proceeding demonstrate that Staff and intervenors should not be required to file deferrals associated with extraordinary gains, but should be able to propose test period adjustments in rate proceedings. PacifiCorp was well aware that it would experience extraordinary REC revenues and, unlike PSE, did not file for a deferred account of its RECs. Instead, PacifiCorp withheld this information from the Commission and interested parties, and now argues that ratepayers can never benefit from the 2009 and 2010 REC revenues because ratepayers did not file for a deferred account related to REC revenues.[26/] PacifiCorp's approach will have the practical effect of ensuring that ratepayers will pay for extraordinary costs but rarely benefit from extraordinary gains. In addition, it will encourage utilities to withhold critical information in rate proceedings.

15 PacifiCorp's arguments regarding the need to file a deferred account also fail to recognize that the Commission has dealt with other extraordinary and unknown revenues during the test period without requiring Staff or intervenors to file a deferred account. As explained in Staff's testimony and previous legal briefing by Staff and Public Counsel, the Commission approved an eight-year amortization of an extraordinary test period gain in a 1999 Avista general

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[26/] PacifiCorp Phase I Reply Brief at ¶¶ 37-40; Kelly, Exh. No. ALK-1T at 2:1-20, 6:5-14.

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rate case.[27/] PacifiCorp has attempted to distinguish this case upon the grounds that it does not specifically mention retroactive ratemaking and was a known and measurable adjustment to a test period contract.[28/] The Avista adjustment was not a traditional known and measurable adjustment, but an unusual adjustment to account for an extraordinary gain Avista experienced under similar circumstances as in this case. Avista, like PacifiCorp, failed to disclose the contract and the additional revenue, 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."[29/] In both Avista's 1999 general rate case and PacifiCorp's recent proceedings, the utilities failed to disclose large revenues that occurred during the test period and should be fully returned to ratepayers.

2. The Rule Against Retroactive Ratemaking Allows the Commission to Account for Extraordinary Gains and Utility Misconduct

16 There are well-established limited exceptions to the rule against retroactive ratemaking that allow for utility commissions to account for unusual or extraordinary gains.[30/] This is especially the case if the gains occurred during the test period or the adjustment is necessary because of utility actions that were illegal, misleading or otherwise inappropriate.[31/] These exceptions are required to protect ratepayers from utility manipulation of the regulatory process, and to provide utilities with an incentive to provide complete and accurate information.

27/ Breda, Exh. No. KHB-7CT at 4:7-11; Staff Phase I Opening Brief at ¶¶ 35-36; See Public Counsel Phase I Opening Brief at ¶ 67.

28/ PacifiCorp Phase I Reply Brief at ¶ 39.

29/ Docket No. UE-991606, Third Suppl. Order at ¶ 67.

30/ Salt Lake Citizens' Cong. v. Mountain States Telephone & Telegraph Co., 846 P.2d 1245, 1254 (Utah 1993); MCI Telecomm. Corp., 840 P.2d at 775; Wise v. Pacific Gas & Elec. Co., 91 Cal. Rptr. 2d 479, 487 (Cal. Ct. App. 1999); Richter, 366 So. 2d at 800; Ohio Power Co. v. Pub. Util. Comm'n, 376 N.E.2d 1337, 1338-39 (Ohio 1978); Southwestern Gas Corp. v. Pub. Serv. Comm'n, 474 P.2d 379, 383 (Nev. 1970).

31/ E.g., Richter, 366 So. 2d at 800; MCI Telecomm. Corp., 840 P.2d at 775.

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17 State courts and commissions have taken divergent approaches to whether consideration of extraordinary past losses and gains violates the rule against retroactive ratemaking.[32/] For those states that do not have a strict approach that can bar even deferred accounting and power cost adjustment mechanisms, there is an exception that allows recognition of past gains associated with extraordinary errors caused by a utility providing inaccurate or misleading information.[33/] This exception is necessary to prevent utilities from subverting the integrity of the ratemaking proceeding.[34/]

18 Florida recognizes the rule against retroactive ratemaking in finding that a commission cannot alter a final order simply because "hindsight makes a different course of action look preferable."[35/] Florida, however, also recognizes that these principles do not apply to unusual situations in which excessive costs are passed on to ratepayers because the commission did not have the true facts when it approved the final rates.[36/] Thus, a commission is empowered to alter final rate orders in cases of extraordinary and substantial changes in circumstances that result from fraud, surprise, mistake, inadvertence or illegal conduct.[37/]

19 The Utah Supreme Court has best explained this exception and how it protects ratepayers and the regulatory process. Utah recognizes that the rule against retroactive

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[32/] Compare Matanuska Elec. Ass'n v. Chugach Elec. Ass'n, 53 P.3d 578 (Alaska 2002) (fuel charge adjustment clauses are illegal as retroactive ratemaking) with Pike County Light & Power Co. v. Penn. Pub. Util. Comm'n, 487 A.2d 118, 121 (Penn. 1985) (rate proceedings may take into account extraordinary losses and gains in the past by amortizing them over a period of years).

[33/] MCI Telecomm. Corp., 840 P.2d at 775; Richter, 366 So. 2d at 800.

[34/] MCI Telecomm. Corp., 840 P.2d at 775.

[35/] Richter, 366 So. 2d at 799-800.

[36/] Id.

[37/] Id.

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ratemaking does not allow changes to approved rates to correct ordinary errors or missteps in the regulatory process, however:

> A utility that misleads or fails to disclose information pertinent to whether rate-making proceeding should be initiated or to the proper resolution of such a proceeding cannot invoke the rule against retroactive ratemaking to avoid refunding rates improperly collected.[38/]

20 The Utah Supreme Court explained that such a conclusion is necessary because utilities are not permitted "to subvert the integrity of the rate-making proceedings by misconduct that affects rates in a manner favorable to the utility."[39/] Rate proceedings should be based on utilities following all commission rules, providing complete and accurate information, and "are not to be conducted on the basis of gamesmanship."[40/] It does not matter that the utility's "'concealment' was 'in plain sight,'" because parties have the right to assume that a utility "will abide by the law and petition the Commission to change its ruling if it believed that such a change was appropriate."[41/] In these circumstances, the failure of a commission to rectify the overpayments by ratepayers is "worse than an abuse of discretion; it is an abdication of its responsibilities to the public."[42/]

21 PacifiCorp's actions are directly the opposite of the type of behavior that should be expected by Washington utilities, and fall within the well-established exception for treatment of extraordinary gains that result from fraud, mistake, or misconduct. PacifiCorp knowingly provided inaccurate forecasts of its REC revenue forecasts in both the 2009 and 2010 GRCs,

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[38/] Salt Lake Citizens' Cong., 846 P.2d at 1254 (internal quotations omitted).
[39/] Id.
[40/] Id. (emphasis in original).
[41/] Id. at 1254-55.
[42/] Id. at 1255.

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failed to correct these inaccuracies when provided the opportunity during the discovery and hearing process, and never petitioned the Commission or sought an accounting order to correct its erroneous information. At a minimum PacifiCorp failed to act in "good faith" and was not "forthcoming with information" that "was an issue of some significance to at least some parties, and should have known it is a matter of significance to the Commission."[43/] PacifiCorp should not be allowed to hide behind the shield of retroactive ratemaking to protect its extraordinary and unusual REC revenues. Instead, the Commission should protect the integrity of the ratemaking process and send a clear message that this type of gamesmanship will not be permitted by ensuring that Washington ratepayers are returned all REC revenues starting on January 1, 2009.

B. Washington Ratepayers Should Be Provided with the Full Value of All RECs Generated in the WCA

22 The Commission should adopt Mr. Schoenbeck's recommended methodology for tracking and calculating Washington's allocated share of REC revenues. While Mr. Schoenbeck and Ms. Breda have proposed similar and reasonable methods for accounting for REC revenues, PacifiCorp has proposed a methodology that fails to provide to Washington the full value of all REC revenues generated from resources in the WCA. The Commission should reject PacifiCorp's one-sided approach that allows its shareholders to retain significant REC revenues.

23 ICNU's REC revenue calculation is based on actual megawatt hours from eligible renewable resources that were generated starting January 1, 2009. ICNU proposes that Washington ratepayers be provided the value associated with their allocated share of all RECs

[43/] Docket No. UE-110070, Order 01 at ¶ 55.

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generated by WCA resources, which requires Washington to be compensated for RECs that are retained for compliance in other states. As PacifiCorp has available RECs and ratepayers are paying for 100% of the resource costs, this imputation should assume that PacifiCorp sells 100% of Washington's allocated REC revenues.

1. Washington Ratepayers Should Be Compensated for RECs Retained for Oregon and California's RPS

24 The most significant dispute regarding the REC tracking mechanism is whether Washington's share of RECs should be reduced, since PacifiCorp is holding or "banking" RECs for the Oregon and California RPS. ICNU, Public Counsel, and Staff all agree that "Washington ratepayers should receive the benefits of all REC revenues associated with the resources they support in rates."[44/] There is no dispute that "Washington ratepayers are allocated a full share of all costs associated with the WCA resources," therefore, Washington "ratepayers should be allocated a full share of all the RECs associated with these same resources."[45/]

25 The tracking mechanisms are based on allocating Washington a share of PacifiCorp's REC revenues and not a share of the actual generated RECs. All parties also recognize that PacifiCorp "banks" or holds a certain amount of RECs to satisfy California's and Oregon's RPS.[46/] It is appropriate for PacifiCorp's actual operations to bank many of its RECs for compliance with state RPS; however, any Washington tracking mechanism must account for the fact that these valuable RECs are banked. Staff, ICNU, and Public Counsel account for the

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[44/] Breda, Exh. No. KHB-7CT at 9:19-20; Schoenbeck, Exh. No. DWS-5CT at 2.
[45/] Schoenbeck, Exh. No. DWS-5CT at 2:13-15 (emphasis in original).
[46/] Breda, Exh. No. KHB-7CT at 9:20-22.

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fact that PacifiCorp's REC revenues are lower because of banking, and propose that Washington should receive imputed value for these banked RECs.[47/]

26 PacifiCorp's REC tracking calculation provides Washington no value for any of banked RECs as they are banked before determining Washington's share of REC revenues. For example, in 2009, PacifiCorp's wind REC revenues were based on the sales of [redacted] RECs, although PacifiCorp actually generated [redacted] wind RECs.[48/] [redacted] of these eligible RECs were not sold because they were held for RPS compliance in Oregon and California. PacifiCorp then allocates to Washington its WCA share of the revenues associated with the sale of the [redacted] RECs, and Washington receives no value for the banked RECs. If PacifiCorp had first "given Washington its allocated share of these RECs, the Company would have sold them."[49/] PacifiCorp's approach "of giving only Oregon and California these RECs unfairly reduces the RECs available for sale and thus unfairly reduces the revenues due [to] Washington ratepayers."[50/]

27 ICNU, Public Counsel and Staff proposed that the value of RECs used for other state RPS compliance should be accounted for by imputing "a value based on the price realized from the actual sales from the same type of resource and vintage."[51/] Significantly, PacifiCorp agrees that ICNU, Staff and Public Counsel's approach is correct, but only a going forward

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47/ Schoenbeck, Exh. No. DWS-5CT at 2; Breda, Exh. No. KHB-7CT at 9-10.
48/ Schoenbeck, Exh. No. DWS-5CT at 5:13-17; Exh. No. DWS-6C.
49/ Breda, Exh. No. KHB-7CT at 9:21—10:2.
50/ Id. at 10:1-4.
51/ Schoenbeck, Exh. No. DWS-5CT at 6:3-6; Breda, Exh. No. KHB-7CT at 9:21—10:2.

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basis.[52/] Thus, while PacifiCorp's tracking calculation allocates Washington no value for these banked RECs in 2009 and 2010, the Company agrees that Washington ratepayers should receive their full value of RECs generated after April 2011.[53]

28 PacifiCorp argues that properly accounting for banked RECs should not occur "retroactively" because "the Company does not have the option of recalculating the allocation of other cost or revenue components during those periods."[54/] PacifiCorp appears to misunderstand the purpose of Phase II of this proceeding, which is not to reset PacifiCorp's costs, but to most accurately track and return to ratepayers the full value of Washington ratepayers' REC revenues for 2009, 2010, 2011, and in the future.

29 PacifiCorp also argues that it has been tracking RECs in its own developed manner for the past few years and that it is inappropriate to change the tracking mechanism now when no party took issue with the tracking method in the past.[55/] PacifiCorp's prior REC tracking mechanism was never approved by the Commission, included errors and inaccuracies, and (most importantly) was for informational—not ratemaking—purposes. The issue of how to address banked RECs is not critical for an informational REC tracking account, but it will have a significant impact once the tracking account is actually used to set rates. In addition, PacifiCorp is wrong, as both ICNU and Staff have taken issue with PacifiCorp's REC revenue estimates.[56/]

[52/] Dalley, Exh. No. RDB-25T at 8-9; Dalley, Exh. No. RDB-28CT at 10:11—12:14; Schoenbeck, Exh. No. DWS-5CT at 6:6-8.
[53] Dalley, Exh. No. RDB-25T at 8-9.
[54/] Dalley, Exh. No. RDB-28CT at 11:6-14.
[55/] Id. at 7:12—8:21.
[56/] See Falkenberg, Exh. No. RJF-1CT at 61-63; Foisy, Exh. No. MDF-1CT at 11-12.

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2. Washington Ratepayers Should Receive 100% of the Imputed REC Revenues From RECs Held for Compliance in Other States

30 ICNU proposes that Washington ratepayers be provided 100% of the imputed REC revenues associated with Washington's share of RECs held for Oregon and California's RPS standards. PacifiCorp argues that if the Commission adopts Staff, ICNU and Public Counsel's approach, then Washington ratepayers should receive an imputation that is [redacted] [redacted] [57/] Staff's original approach used the percentage of RECs sold based on PacifiCorp's past experience, but Staff does not oppose ICNU's approach and agrees that both methods "are reasonable."[58/] Washington ratepayers are required to pay for 100% of the RECs needed for Washington RPS compliance, equity and symmetry dictates that Washington ratepayers should receive 100% of the REC revenues value for the RECs held for compliance in other states. Taken alone, ICNU's approach of counting 100% of the RECs increases the value of the tracking account.

31 The tracking mechanism should be based on 100% of the RECs held for state compliance being assumed to be "marketable" or sold because they are the most valuable RECs. For example, to be eligible for the California RPS, PacifiCorp must certify the eligible renewable resources with the California Energy Commission. Resources that are not eligible or not certified under the California program may still be sold, but are sold in a less attractive market with lower prices. Thus, RECs that are held to satisfy a state RPS should be assumed to be sold to these more valuable markets. In other words, if PacifiCorp did not have the RECs available

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[57/] Dalley, RBD-28CT at 18:14—19:7.
[58/] Breda, KHB-9CT at 4:1-6.

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for the state RPS programs, then the Company would have been required to purchase the RECs to satisfy the state programs at the market price.

32 Mr. Schoenbeck's proposal must also be viewed in light of his overall approach, which is based on energy produced by renewable generating resources during the test period and not on the date in which PacifiCorp realized revenue from the REC sales.[59/] In contrast to Staff and PacifiCorp, Mr. Schoenbeck's approach focuses on actual test period generation levels, and excludes [redacted][60/] PacifiCorp does not oppose Mr. Schoenbeck's recommendation to change its tracking mechanism [redacted][61/]

33 [redacted]

[59/] See Schoenbeck, Exh. No. DWS-5CT at 4:1—5:2 (explaining Mr. Schoenbeck's proposal); Breda, Exh. No. KHB-9CT at 2:12-22 (explaining Mr. Schoenbeck's proposal).

[60/] Schoenbeck, Exh. No. DWS-5CT at 2:8-10.

[61/] See Dalley, Exh. No. RBD-28CT at 17:1—20:20 (PacifiCorp's "corrections" to Mr. Schoenbeck's tracking mechanism); Schoenbeck, Exh. No. DWS-5CT at 5:1-2.

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[redacted] [62/]

3. The REC Tracking Account Should Be Reduced to Account for the Amounts in the 2010 Settlement, but Not the 2009 Settlement

34 PacifiCorp has proposed that the 2009 and 2010 revenues should be reduced to account "for the amount of REC revenues previously established in rates in those years."[63/] ICNU agrees in principle and recommends that 2010 REC revenues be reduced by the amount assumed in rates because REC revenues were specifically identified in the settlement of the 2009 GRC. There should be no reduction for 2009 REC revenues, since no specific amount was assumed to be in rates. ICNU is adopting Staff's recommendation on this issue.[64/]

35 Staff proposed that the 2010 REC revenues be reduced by $657,755 based on the settlement stipulation in the 2009 GRC.[65/] The overall revenue requirement in the 2009 GRC was based on a black box settlement; however, the settlement specifically identified that any REC deferral or any other action regarding PacifiCorp's Washington allocated RECs would assume that the 2009 GRC includes $657,775 in Washington allocated RECs for the 2010 rate effective period.[66/] ICNU does not dispute Staff's approach regarding the 2009 GRC and how the 2010 REC revenues should be adjusted.

62/ See Schoenbeck, Exh. No. DWS-5CT at 4:20—5:2.
63/ Dalley, Exh. No. RBD-28CT at 19:8-16.
64/ See Breda, Exh. No. KHB-9CT at 2:1-9.
65/ Breda, Exh. KHB-7CT at 9:3-6.
66/ Docket No. UE-090205, Order No. 09 ¶ 59 and Settlement Stipulation at ¶ 22.

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36 Neither Staff nor ICNU and Public Counsel reduced REC revenues for 2009, since the rate period was based on a complete black box settlement stipulation. PacifiCorp disagrees and proposes that the 2009 revenues should include an offset for the "amount of REC revenues previously established in rates in those years," which PacifiCorp states is $576,254.[67/] PacifiCorp bases its $576,254 amount on the Company's filing in UE-080220.[68/] There are two significant problems with PacifiCorp's approach that make it impossible to determine what, if any, REC revenues were established in rates for 2009. First, the test period in UE-080220 ended June 2007, so it is not clear that the $576,254 amount should reflect the 2009 REC revenues at issue in this proceeding. Second, and more importantly, the UE-080220 case was resolved by a complete black box settlement that did not identify any specific amount of REC revenues assumed to be in rates.[69/] In UE-080220, PacifiCorp proposed a $34.9 million increase and the parties agreed to a $20.4 million increase, and there is no way to take apart the black box settlement to identify what aspects of the Company's original filing were accepted or rejected, including the filed amount of REC revenues.[70/]

4. ICNU Agrees to PacifiCorp's Remaining Two "Corrections"

37 PacifiCorp disagreed with four aspects of Mr. Schoenbeck's REC revenue tracking mechanism proposal and ICNU accepts two minor Company "corrections."[71/] First, Mr. Schoenbeck utilized the same inter-state cost allocation factors as in PacifiCorp's initial Phase II

67/ Dalley, Exh. No. RBD-28CT at 15:15—16:6, 19:8—20:2.
68/ Id.
69/ WUTC v. PacifiCorp, Docket No. UE-080220, Order No. 05 ¶¶ 1-2, 11 (Oct. 8, 2008).
70/ See id.
71/ Dalley, Exh. No. RBD-28CT at 17:8—20:20.

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filing and testimony.[72/] PacifiCorp updated these factors in rebuttal testimony after Mr. Schoenbeck filed his testimony.[73/] Second, PacifiCorp adjusts Mr. Schoenbeck's calculation to include the actual number of Washington non-eligible RECs sold in the calculation of 2009 REC revenues rather than the estimate included in Mr. Schoenbeck's testimony.[74/] ICNU agrees to both PacifiCorp adjustments (the cost allocation factor update and the use of the actual number of non-eligible RECs), which have the combined result of increasing 2009 REC revenues by [redacted] and 2010 REC revenues by [redacted].[75/]

C. The Commission Should Adopt Mr. Schoenbeck's Revision to the Tracking Proposal

38 ICNU recommends that the Commission adopt an additional revision to the Company's REC tracking mechanism to minimize the size of possible negative balances in the tracking account. The Commission directed PacifiCorp to file a tracking mechanism that was based on the rate period year and a credit based on an estimate of the Company's expected RECs for the next twelve months.[76/] PacifiCorp proposed that the tracking mechanism depart from the Commission's order and be based on a calendar year instead of the rate year.[77/] ICNU supports this change.

39 ICNU recommends an additional revision to the tracking mechanism that would base the credit upon the actual accumulated amount in the tracking account.[78/] Using actual

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72/ Id. at 17:20—18:5.
73/ Id.
74/ Id. at 18:6-13.
75/ Id. at 18:4-13.
76/ Docket No. UE-100749, Order No. 06 ¶¶ 203-207.
77/ Schoenbeck, DWS-5CT at 8:4-11.
78/ Id. at 8:12—9:12.

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amounts booked in the preceding year can avoid the problem of accumulating a cash balance in an interest-bearing account, which must ultimately be recovered from ratepayers.[79/] This problem was recently experienced in a recent PSE proceeding.[80/] This will minimize the size of large negative balances in the tracking account that would ultimately need to be recovered from ratepayers.[81/]

40 PacifiCorp opposes this approach, arguing that ICNU has presented "no analysis or rationale for this proposal," and that it will increase the financial burden on the Company.[82/] As detailed above, Mr. Schoenbeck fully explained the grounds for his recommended revision. Given PacifiCorp's wildly inaccurate REC estimates that have largely been caused by the Company's refusal to provide complete information to the parties and the Commission, PacifiCorp and not ratepayers should bear any burdens associated with changes in REC amounts.

IV. CONCLUSION

41 ICNU urges the Commission to adopt the recommended REC tracking calculation proposed by Mr. Schoenbeck and reject PacifiCorp's myriad arguments allegedly supporting keeping these ratepayer revenues with its shareholders. Customers have seen significant, nearly annual rate increases in part due to the costs of renewable resources. Ratepayers are responsible for 100% of PacifiCorp's prudently incurred costs of these resources and it is good public policy to ensure that ratepayers receive benefits of any revenues associated with the sale of RECs.

79/ Id.
80/ Id.; WUTC v. Puget Sound Energy, Inc., Docket No. UE-091703, Order 02 (June 24, 2010).
81/ Schoenbeck, DWS-5CT at 9:1-12.
82/ Kelly, Exh. No. ALK-2CT at 11:13-21.

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Respectfully submitted,

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