Exhibit No. DWS-1RT
Docket No. UE-070725
Witness: Donald W. Schoenbeck

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

REDACTED

RESPONSE TESTIMONY OF DONALD W. SCHOENBECK

ON BEHALF OF

THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

January 28, 2010

I. INTRODUCTION AND SUMMARY

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A.** My name is Donald W. Schoenbeck. I am a member of Regulatory & Cogeneration
3 Services ("RCS"), a utility rate and economic consulting firm. My business address is
4 900 Washington Street, Suite 780, Vancouver, WA 98660.

5 **Q. PLEASE DESCRIBE YOUR BACKGROUND AND EXPERIENCE.**

6 **A.** I have been involved in the electric and gas utility industries for over 35 years. For the
7 majority of this time, I have provided consulting services for large industrial customers
8 addressing regulatory and contractual matters. I have appeared before the Washington
9 Utilities and Transportation Commission (the "Commission") on many occasions since
10 1982. A further description of my educational background and work experience can be
11 found in Exhibit No. DWS-2.

12 **Q. ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?**

13 **A.** I am testifying on behalf of the Industrial Customers of Northwest Utilities ("ICNU").
14 ICNU is a non-profit trade association whose members are large industrial customers
15 served by electric utilities throughout the Pacific Northwest, including Puget Sound
16 Energy ("PSE" or the "Company").

17 **Q. WHAT TOPICS WILL YOUR TESTIMONY ADDRESS?**

18 **A.** I will respond to PSE's proposed use of the net revenue generated from the sale of
19 renewable energy credits ("RECs") and other carbon financial instruments ("CFIs"),
20 including how the net revenue should be flowed back to PSE's retail customers.

1 **Q. PLEASE BRIEFLY SUMMARIZE YOUR FINDINGS AND RECOMMENDATIONS**
2 **ADDRESSED IN THIS TESTIMONY.**

3 **A.** Based on historical transactions executed to date, PSE's projected net revenue from the
4 sale of RECs and CFIs will be about [redacted] through August 2015, a substantial
5 sum. PSE is proposing to use the net revenue to: 1) offset a $21 million receivable it
6 continues to carry on its books from the energy crisis of 2000/2001; 2) dedicate up to $20
7 million to fund low income programs; and 3) credit the remaining amount to customers.
8 PSE proposes to distribute $10 million of existing net revenues to low income programs
9 and distribute the net revenue received from five REC sales contracts to the three
10 categories using allocation percentages until the receivable and low income amounts have
11 been fully funded. Thereafter, all net revenue would be flowed through as a customer
12 credit.

13 My testimony explains why all of the net revenue should be flowed back to
14 customers through a separate tariff rider. PSE's claim that the substantial net revenue
15 amount is attributable or tied to its California receivable claim is wrong, based upon
16 publically available information. With a rate stabilization program in place during the
17 energy crisis period, PSE's wholesale activity was solely for the benefit or detriment of
18 its shareholders. As a result, PSE's current shareholders should not now receive a
19 windfall profit from the REC sales. The net revenues should be returned to all the
20 customers who paid for the renewable resources that generated the RECs and CFIs, and
21 net revenues should not be paid to shareholders or to fund low income programs. The net
22 revenues should be distributed to the various customer classes in the same manner the
23 costs of the facilities providing the revenue has been assigned. In other words, the

Company's peak credit classification and allocation factors for production-related costs should be used to assign the net revenue credit to each class. If the Commission determines that a portion of the net revenue should be set aside to fund low income programs, then the monies should come from the amount credited to the residential customer class. ICNU recommends that a separate tariff rider should be used to track net revenues and assign a credit to each class.

II. PSE NET REVENUE PROJECTION

Q. PLEASE EXPLAIN AND DESCRIBE THE SOURCES OF THE SUBSTANTIAL PROJECTED NET REVENUES.

A. Since August 2007, PSE has been selling RECs to various entities, as shown by PSE's response to Public Counsel Data Request ("DR") 30, attached to this testimony as Exhibit DWS-3HC. In total, this exhibit indicates net proceeds through November 2009 of [redacted] attributable to these sales. PSE's response to Public Counsel DR 31, attached to this testimony as exhibit DWS-4C, shows the proceeds from CFI sales. From March 2009, through November 2009, the net proceeds from these transactions were [redacted]. Finally, since December 2008, PSE has executed five REC sales contracts, which account for most of the net revenue projection. PSE has executed three contracts with Southern California Edison Company ("SCE"), one contract with Pacific Gas and Electric Company ("PG&E"), and one contract with Shell Energy North America ("Shell"). PSE's response to Public Counsel DR 37, attached to this testimony as Exhibit DWS-5HC, shows the projected revenue from these five agreements. In aggregate, these transactions provide for deliveries of power from September 2009, through August 2015, with a projected net value of [redacted].

Q. ARE THE AMOUNTS SHOWN IN THESE THREE DATA RESPONSES ADDITIVE?

A. No. A substantial portion of the net revenue included in Exhibit DWS-3HC ([redacted]) is associated with two of the REC sales contracts set forth in Exhibit DWS-5HC. Eliminating this "double counting" results in a projected net revenue amount of about [redacted].

Q. AS MOST OF THE PROJECTED NET REVENUE IS ASSOCIATED WITH THE FIVE CONTRACTS EXTENDING THROUGH 2015, HOW LIKELY IS IT THAT PSE WILL ACTUALLY REALIZE THESE REVENUES?

A. It is highly likely PSE will realize revenue close to this estimate. The pricing under all five contracts is based [redacted] Three of the contracts also specify a fixed amount of energy to be delivered under the agreement. These contracts are the agreement executed with SCE, effective December 31, 2008 ("SCE1"), the contract, dated April 16, 2009 with PG&E, and the second SCE contract, effective May 28, 2009 ("SCE2"). The contract with Shell has a limited term calling for deliveries from [redacted] Accordingly, the associated energy deliveries and margin revenue will be realized and known by the conclusion of this proceeding for the Shell contract. The third contract with SCE ("SCE3") requires the exclusive sale of PSE's portion of the Klondike III wind resource to SCE. The projected deliveries under this contract are [redacted]. Consequently, only under this last contract (SCE3) are the energy deliveries uncertain and dependent upon the actual amount of power that will be produced from this resource. The following table presents the required or projected energy deliveries, associated margin and resulting net revenue for each of these five agreements.

Summary of Energy Agreements

Contract	Energy (GWhs)	Margin ($/MWh)	Margin Revenue (Millions)
SCE1	2,000	[redacted]	[redacted]
PG&E	1,000	[redacted]	[redacted]
SCE2	2,560	[redacted]	[redacted]
Subtotal:	5,560		[redacted]
SCE3	[redacted]	[redacted]	[redacted]
Shell	[redacted]	[redacted]	[redacted]
Total:	[redacted]		[redacted]

As shown by the table, the three fixed energy contracts account for [redacted]% of the projected energy deliveries and [redacted]% of the net revenue from all five agreements. Taking the bundle of contracts together, PSE should realize an amount of revenue relatively close to the estimate shown in the above table.

III. PSE PROPOSED DISTRIBUTION OF NET REVENUE

Q. HOW IS PSE PROPOSING TO USE THESE PROCEEDS?

A. The Company is proposing to allocate the net funds into three categories. First, the Company proposes that $21.1 million be used to offset the receivable it has maintained on its books since the California energy crisis of 2000 and 2001. Second, the Company is proposing that up to $20 million be used for low income programs and that all remaining monies go to ratepayers. More specifically, the Company is proposing that the existing net revenue associated with the CFIs and historic non-contract REC sales go toward the first $10 million of support for the low income programs. Then, the remaining net revenue from the five contracts would be distributed as the revenue is realized with 40% going to the receivable obligation until the $21 million amount is offset, 20% to low

income until the $20 million ceiling level is achieved and 40% going to ratepayers. The likely result from this proposal is that the $20 million low income distribution will be fully funded by [redacted]. PSE will have received the full $21.1 million receivable amount by [redacted], but ratepayers will not receive all their credits until [redacted]. The following table compares the expected net revenue distribution with the net present value for each category as of August 2010 and using a 10% discount rate. The table shows that on a net present value ("NPV") basis, PSE's "front end loaded" funding of the receivable and low income categories essentially penalizes ratepayers versus the other two categories. In order to equitably share the NPV loss from the extended contractual arrangements, the percentages should be 8.5% for the receivable and low income categories and 83% for the ratepayer category applied to all net revenue.

Net Revenue Comparison

Category	Net Revenue (Millions)	NPV (Millions)	Difference (Millions)
Receivable	$21.1	$21.1	$0.0
Low Income	$20.0	$20.0	$0.0
Ratepayers	[redacted]	[redacted]	[redacted]
Total:	[redacted]	[redacted]	[redacted]

Q. PLEASE EXPLAIN HOW PSE INTENDS TO CREDIT THE REMAINING AMOUNT TO CUSTOMERS?

A. PSE is not proposing a specific methodology to credit the remaining net revenues to customers. In response to Public Counsel DR No. 20, PSE stated that it "has not made a proposal as to how the underlying tariff would credit customers." DWS-19 at 1.

IV. ICNU RECOMMENDATIONS

Q. DOES ICNU SUPPORT PSE'S PROPOSED DISTRIBUTION OF THE PROJECTED NET REVENUES?

A. No. ICNU recommends that all of the net revenue should be flowed back to PSE's ratepayers, who have paid the cost of the renewable resources that generate the RECs and CFIs.

Q. WHY DO YOU DISAGREE WITH THE COMPANY'S PROPOSAL TO USE A PORTION OF THE MONIES TO OFFSET THE CALIFORNIA RECEIVABLE?

A. PSE alleges the sales contracts and the associated prices would not have occurred but for its claim of $21.1 million from various California entities including SCE and PG&E. This assertion reflects a poor understanding of the California REC requirements and the associated market. Several years ago, California legislation was enacted requiring all California load serving entities ("LSEs") to use renewable resources to meet 20% of their sales by 2010 and arguably 33% by 2020. As there were not enough existing renewable resources to satisfy this requirement, LSEs (including SCE and PG&E) have been conducting numerous bid solicitations and entering in to bilateral contracts to achieve the 2010 requirement and to avoid the $50/MWh shareholder penalty for non-compliance. With each renewable contract execution, entities regulated by the California Public Utilities Commission ("CPUC") must submit the contract for approval in an "advice letter filing." The CPUC will then issue a "resolution" either approving or denying the advice letter.

Attached to this testimony as Exhibits DWS-6, DWS-7, DWS-8, DWS-9, DWS-10 and DWS-11 are portions of the advice letter filings made to date with regard to four of the five contacts. Exhibits DWS-7 and DWS-8 are portions of the advice letter filings

associated with the SCE1 agreement. Exhibits DWS-9 and DWS-10 are portions of the advice letter filings for the SCE2 agreement. Exhibit DWS-11 is a part of the advice letter filing for the SCE3 agreement, and Exhibit DWS-6 is the advice letter filing for the PG&E agreement. While all these agreements are the results of bilateral contracting by the California entities, each advice letter filing explains how the associated price is comparable to the prices for contracts entered into as a result of the utility solicitations. Of particular relevance to this instant docket is Exhibit DWS-8. This supplemental advice letter filing by SCE addresses the Federal Energy Regulatory Commission settlement agreement and the release of claims by the associated parties. In particular, it includes the following sentences:

> The Puget Contract's pricing is not dependent on the Settlement Agreement and SCE would have chosen to enter into the Puget Contract independent of the Settlement Agreement. The Puget Contract should be evaluated on its own merits as a market transaction for the purchase of renewable energy, irrespective of the Settlement Agreement.

Q. DID THE CPUC APPROVE THIS AGREEMENT?

A. Yes. The CPUC approved the SCE1 contract on June 18, 2009, with the issuance of Resolution E-4244. The resolution (without the attachments) is attached to this testimony as Exhibit DWS-13. The discussion regarding the contract price is on page 17 of the resolution. It states that the contract price is reasonable as compared to the shortlisted resources from the 2008 solicitation for the same period of deliveries.

Q. HAS THE CPUC ISSUED OTHER RESOLUTIONS REGARDING PSE CONTRACTS?

A. Yes. Resolutions E-4278 issued on October 15, 2009, and E-4300 issued on December 17, 2009, approved the PG&E and SCE3 agreements. Portions of these documents are

provided as Exhibits DWS-14 and DWS-12. Both resolutions note the contract price is reasonable as compared to the respective utility's 2008 renewable solicitation. Consequently, based on publically available information, the prices under these agreements are not due to PSE's California receivable claim, but rather the supply and demand factors facing LSEs in California to achieve the state mandated renewable energy procurement levels.

Q. IS PSE'S SITUATION UNIQUE?

A. No. SCE made similar filings with the CPUC with regard to a PacifiCorp Renewable Portfolio Standard contract in July 2009. These were not attributable to the litigation regarding the power crisis of 2000-01, because PacifiCorp had settled with the California parties in June 2007. Exhibit Nos. DWS-16, DWS-17 and DWS-18.

Q. WHY HASN'T THE CPUC ISSUED A RESOLUTION WITH REGARD TO THE SCE2 CONTRACT?

A. I believe it simply has to do with the tasks or workload of the Energy Division of the CPUC. Deliveries under the SCE2 agreement do not commence until 2012, and SCE filed a relatively recent supplement to the original advice letter regarding this contract. So, there is still a good deal of time between now and when this contract needs to be approved.

Q. ARE THERE ANY OTHER REASONS WHY PSE'S SHAREHOLDERS SHOULD NOT BE GIVEN A PORTION OF THE NET REVENUE PROCEEDS?

A. Yes. Pursuant to the Commission order approving the merger of Washington Natural Gas Company and Puget Sound Power & Light Company, a five year rate stabilization plan was in place from January 1, 1998, through December 31, 2001. The rate plan set forth the specific rate adjustments that were allowed each year. Also during this time,

there was no rate mechanism to adjust for or track changes in power related costs, such as power cost adjustment mechanism that PSE has in place today. Accordingly, PSE wholesale activities during the energy crisis were solely for the benefit or detriment of its shareholders. The receivable that PSE carries on its books was created during this time period in which PSE's activities benefited shareholders. With this being the case, there is absolutely no justification for now allowing PSE's current shareholders to benefit from the net revenues from the REC sales, nor is there any justification for ratepayers to compensate shareholders for activities during this period. Also, during the many years when PSE was pursuing the various California energy crisis litigations, the associated costs for outside legal and consulting services was borne by the ratepayers. See Exhibit DWS-15. To my knowledge, none of this effort was paid for by PSE's shareholders. In addition, there is no relationship between the net revenues associated with renewable energy projects and PSE's wholesale activities in 2000-2001. Finally, even if PSE shareholders were entitled to a portion of the REC net revenues, PSE has not presented any evidence demonstrating that the Company should be entitled to $21.1 million. For all these reasons, PSE's ratepayers should receive all of the net revenue benefit.

Q. WHY DON'T YOU SUPPORT USING A PORTION OF THE FUNDS TO SUPPLY ADDITIONAL LOW INCOME ACTIVITY?

A. The net revenues from the REC sales are the result of all non-direct access customers contributing to the costs associated with the renewable generation resources based on PSE's cost of service studies. No customer class should receive preferable allocation of the benefits of the REC sales. There is no reason to treat REC revenues different from any other utility revenue which is used to offset utility costs and lower rates for all

customers. The Commission should continue its current policy of addressing low income credits and funding in general rate proceedings.

Q. WHAT DO YOU RECOMMEND IF THE COMMISSION DECIDES TO SPECIFICALLY ALLOCATE A PORTION OF THE REC NET REVENUES TO LOW INCOME CUSTOMERS?

A. I have always advocated that such programs should be borne by the primary beneficiaries of the program under a "cost follows benefit" approach. As the direct beneficiaries of these program commitments are the residential class, any monies earmarked for increasing low income program funding should come from the net benefit assigned to the residential class.

V. CREDITING THE NET REVENUE TO RATEPAYER CLASSES

Q. HOW SHOULD THE NET REVENUE BE ALLOCATED TO EACH CUSTOMER CLASS?

A. The net revenue should be allocated in the same manner in which the costs of the resources from which the sales are attributable is done in PSE's cost-of-service study. As these are generating resources, PSE's peak credit classification and allocation percentage should be used to assign the net revenue to each class. Based on PSE's cost-of-service study filed in docket UE-090704, the following table shows the class percentages resulting from this recommendation.

Recommended Net Revenue Allocation

Class	Peak Credit Percentage
Residential Sch 7	53.31%
Sch 24 (kW< 50)	12.11%
Sch 25 (kW > 50 & < 350)	13.81%
Sch 26 (kW > 350)	9.25%
Sch 31 (General Service)	5.47%
Sch 35 (Irrigation)	0.02%
Sch 43 (Interruptible)	0.58%
Campus Sch 40	2.80%
Sch 46 & 49	2.25%
Sch 449 Primary	0.00%
Sch 449 HV	0.00%
St Lighting	0.37%
Special Contract	0.00%
Firm Resale (Small)	0.03%

The calculation in the above table assumes the firm resale class has a contractual arrangement under which it is entitled to a portion of the net revenue benefit. If this is not the case, the net benefit should only be assigned to the applicable retail customers.

Q. DOES ICNU HAVE A RECOMMENDATION ON HOW THE NET REVENUE SHOULD BE FLOWED BACK TO EACH CUSTOMER?

A. Yes. ICNU recommends that a separate tariff be established setting forth class specific kilowatthour credits. By returning the revenues in this manner, all parties will be able to readily check or audit the crediting of the net revenues to ratepayers.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes, it does.

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

DWS-16

Supplement to Submission of Bilateral Agreement for Procurement of Renewable Energy

January 28, 2009

STATE OF CALIFORNIA

PUBLIC UTILITIES COMMISSION
SAN FRANCISCO, CA 94102-3298

ARNOLD SCHWARZENEGGER, *Governor*

November 6, 2009

Advice Letters 2357-E/E-A

Akbar Jazayeri
Vice President, Regulatory Operations
Southern California Edison Company
P O Box 800
Rosemead, CA 91770

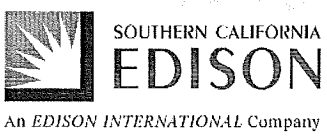
Subject: Submission of Bilateral Agreement for Procurement of Renewable Energy

Dear Mr. Jazayeri:

Advice Letters 2357-E/E-A are effective October 15, 2009 per Resolution E-4264.

Sincerely,

Julie A. Fitch, Director
Energy Division



Akbar Jazayeri
Vice President of Regulatory Operations

September 30, 2009

ADVICE 2357-E-A
(U 338-E)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
ENERGY DIVISION

SUBJECT: Supplement to Submission of Bilateral Agreement for Procurement of Renewable Energy

On July 1, 2009, Southern California Edison Company ("SCE") filed Advice 2357-E, which seeks California Public Utilities Commission ("Commission" or "CPUC") approval of a renewables portfolio standard ("RPS") power purchase agreement between SCE and PacifiCorp, a MidAmerican Energy Holdings Company (the "PacifiCorp Contract"). On August 11, 2009, the Commission's Energy Division issued Draft Resolution E-4264 approving the PacifiCorp Contract.

The purpose of this advice filing is to supplement Advice 2357-E in order to make minor corrections to certain information in Confidential Appendices B, C, D, and G of Advice 2357-E. These minor corrections do not change the evaluation of the PacifiCorp Contract or the Draft Resolution's conclusions that the PacifiCorp Contract price is reasonable and that the contract should be approved. Accordingly, SCE requests that the Commission expeditiously approve Draft Resolution E-4264 at its October 15, 2009, meeting.

In accordance with General Order ("GO") 96-B, the confidentiality of information included in this advice filing is described below. This advice filing contains both confidential and public attachments as listed below.

Attachment 1: Designation of Confidential Information

Confidential Attachment 2: Corrected Appendix B – Pricing Analysis

Confidential Attachment 3: Corrected Appendix C – 2008 Solicitation Overview and Workpapers

P.O. Box 800 2244 Walnut Grove Ave. Rosemead, California 91770 (626) 302-3630 Fax (626) 302-4829

Confidential Attachment 4: Corrected Pages of Appendix D – Confidential Contract Summary

Confidential Attachment 5: Corrected Appendix G – AMF Calculator for PacifiCorp Contract

BACKGROUND

SCE filed Advice 2357-E seeking Commission approval of the PacifiCorp Contract on July 1, 2009. On August 11, 2009, the Commission's Energy Division issued Draft Resolution E-4264 approving the PacifiCorp Contract. Among other things, Draft Resolution E-4264 concludes that the PacifiCorp Contract price is reasonable and compares favorably to the bids SCE received in its 2008 RPS solicitation.

Since SCE submitted Advice 2357-E, SCE discovered and corrected a minor error in certain pricing information included in the advice letter. SCE has corrected certain information in Confidential Appendix D. The corrected pages of Confidential Appendix D, with the corrections shown in redline, are included as Attachment 4. SCE has also provided corrected versions of certain supporting spreadsheets which were attached as Appendices B, C, and G to Advice 2357-E. These corrected spreadsheets are included as Attachments 2, 3, and 5.

These minor corrections do not change the evaluation of the PacifiCorp Contract or the Draft Resolution's conclusions that the PacifiCorp Contract price is reasonable and that the contract should be approved. Moreover, as detailed in Advice 2357-E, the PacifiCorp projects are currently operating and energy deliveries under the PacifiCorp Contract commence on October 1, 2009. Accordingly, the Commission should expeditiously approve Draft Resolution E-4264 at its October 15, 2009, meeting.

CONFIDENTIALITY

SCE is requesting confidential treatment of Attachments 2 through 5 to this advice filing. The information for which SCE is seeking confidential treatment is identified in Attachment 1. The confidential version of this advice filing will be made available to appropriate parties (in accordance with SCE's Proposed Protective Order, as discussed below) upon execution of the required non-disclosure agreement. Parties wishing to obtain access to the confidential version of this advice filing may contact Cathy Karlstad in SCE's Law Department at Cathy.Karlstad@sce.com or (626) 302-1096 to obtain a non-disclosure agreement. In accordance with GO 96-B, a copy of SCE's Proposed Protective Order was attached as Appendix M to Advice 2357-E. It is appropriate to accord confidential treatment to the information for which SCE requests confidential treatment in the first instance in the advice letter process because such information is entitled to confidential treatment pursuant to Decision ("D.")06-06-066 and is required to be filed by advice letter as part of the process for obtaining Commission approval of RPS power purchase agreements.

The information in this advice filing for which SCE requests confidential treatment, the pages on which the information appears, and the length of time for which the information should remain confidential, are provided in Attachment 1. This information is entitled to confidential treatment pursuant to D.06-06-066 (as provided in the Investor-Owned Utility ("IOU") Matrix). The specific provisions of the IOU Matrix that apply to the confidential information in this advice filing are identified in Attachment 1.

The confidential information provided in this advice filing cannot be aggregated, redacted, summarized, masked, or otherwise protected in a manner that would allow partial disclosure of the data, while still protecting confidential information, because the RPS contract advice letter filing template calls for the data to be provided in its present form. SCE would object to any disclosure of the confidential information in aggregated form. Based on the format of the RPS contract advice letter filing template, SCE is not aware of any manner that the confidential information could be aggregated that would qualify the information for public status under the IOU Matrix of D.06-06-066.

To the best of my knowledge, SCE maintains as confidential the information contained in this advice filing for which confidentiality is sought. SCE is informed and believes that this information is maintained by SCE's Renewable and Alternative Power Department and provided internally only to those employees who need to know the information to carry out their job duties. SCE is also informed and believes that this information has not been disclosed to any person other than employees of SCE or non-market participants (such as the Procurement Review Group).

TIER DESIGNATION

Pursuant to GO 96-B, Energy Industry Rule 5.3, SCE submits this advice filing with a Tier 3 designation (effective after Commission approval).

EFFECTIVE DATE

SCE requests that this advice filing become effective on October 15, 2009, subject to review and approval by the Commission.

PROTESTS

SCE asks that the Commission maintain the original protest and comment period as designated in Advice 2357-E and not reopen the protest period or allow additional comments. As discussed above, the Commission's Energy Division has issued Draft Resolution E-4264 approving the PacifiCorp Contract. The minor corrections included in this supplemental advice filing do not change the overall evaluation or reasonableness of the PacifiCorp Contract as set forth in Draft Resolution E-4264. Additionally, as explained above and in Advice 2357-E, expeditious approval of the PacifiCorp Contract is needed as energy deliveries under the PacifiCorp Contract commence on October 1, 2009.

NOTICE

In accordance with Section 4 of GO 96-B, SCE is furnishing copies of this advice filing to the interested parties shown on the attached R.08-08-009, R.06-02-012, and GO 96-B service lists. Address change requests to the GO 96-B service list should be directed to AdviceTariffManager@sce.com or at (626) 302-2930. For changes to any other service list, please contact the Commission's Process Office at (415) 703-2021 or at ProcessOffice@cpuc.ca.gov.

Further, in accordance with Public Utilities Code Section 491, notice to the public is hereby given by filing and keeping the advice letter at SCE's corporate headquarters. To view other SCE advice letters filed with the Commission, log on to SCE's web site at http://www.sce.com/AboutSCE/Regulatory/adviceletters/.

All questions concerning this Advice Letter should be directed to Laura Genao at (626) 302-6842 (E-mail: Laura.Genao@sce.com).

Southern California Edison Company

Akbar Jazayeri

AJ:lg:sq
Enclosures

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY
ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No.: Southern California Edison Company (U 338-E)

Utility type:
☑ ELC ☐ GAS
☐ PLC ☐ HEAT ☐ WATER

Contact Person: James Yee
Phone #: (626) 302-2509
E-mail: James.Yee@sce.com
E-mail Disposition Notice to: AdviceTariffManager@sce.com

EXPLANATION OF UTILITY TYPE
ELC = Electric GAS = Gas
PLC = Pipeline HEAT = Heat WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: 2357-E-A Tier Designation: 3

Subject of AL: Supplement to Submission of Bilateral Agreement for Procurement of Renewable Energy

Keywords (choose from CPUC listing): Compliance, Contracts, Procurement

AL filing type: ☐ Monthly ☐ Quarterly ☐ Annual ☑ One-Time ☐ Other

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #:

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL:

Summarize differences between the AL and the prior withdrawn or rejected AL[1]:

Confidential treatment requested? ☑ Yes ☐ No

If yes, specification of confidential information: See Attachment 1.
Confidential information will be made available to appropriate parties who execute a nondisclosure agreement.
Name and contact information to request nondisclosure agreement/access to confidential information:

Cathy Karlstad, Law Department, at (626) 302-1096 or Cathy.Karlstad@sce.com

Resolution Required? ☑ Yes ☐ No

Requested effective date: 10/15/09 No. of tariff sheets: -0-

Estimated system annual revenue effect: (%):

Estimated system average rate effect (%):

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: None

Service affected and changes proposed[1]:

Pending advice letters that revise the same tariff sheets:

[1] Discuss in AL if more space is needed.

All correspondence regarding this AL shall be sent to:

CPUC, Energy Division
Attention: Tariff Unit
505 Van Ness Ave.,
San Francisco, CA 94102
jnj@cpuc.ca.gov and mas@cpuc.ca.gov

Akbar Jazayeri
Vice President of Regulatory Operations
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California 91770
Facsimile: (626) 302-4829
E-mail: AdviceTariffManager@sce.com

Bruce Foster
Senior Vice President, Regulatory Affairs
c/o Karyn Gansecki
Southern California Edison Company
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Facsimile: (415) 673-1116
E-mail: Karyn.Gansecki@sce.com

Marc Ulrichl
Vice President, Renewable and Alternative Power
c/o Mike Marelli
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2244 Walnut Grove Avenue, Quad 4D
Rosemead, California 91770
Facsimile: (626) 302-1103
E-mail: Mike.Marelli@sce.com

With a copy to:

Cathy Karlstad
Attorney
Southern California Edison Company
2244 Walnut Grove Avenue, 3rd Floor
Rosemead, California 91770
Facsimile: (626) 302-1935
E-mail: Cathy.Karlstad@sce.com

Attachment 1

Designation of Confidential Information

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

DWS-17

Advice Letters 2357-E/E-A are effective October 15, 2009 per Resolution E-4264.

January 28, 2009

STATE OF CALIFORNIA
PUBLIC UTILITIES COMMISSION
SAN FRANCISCO, CA 94102-3298

ARNOLD SCHWARZENEGGER, *Governor*

November 6, 2009

Advice Letters 2357-E/E-A

Akbar Jazayeri
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Southern California Edison Company
P O Box 800
Rosemead, CA 91770

Subject: Submission of Bilateral Agreement for Procurement of Renewable Energy

Dear Mr. Jazayeri:

Advice Letters 2357-E/E-A are effective October 15, 2009 per Resolution E-4264.

Sincerely,

Julie A. Fitch, Director
Energy Division

SOUTHERN CALIFORNIA EDISON
An EDISON INTERNATIONAL Company

Akbar Jazayeri
Vice President of Regulatory Operations

July 1, 2009

ADVICE 2357-E
(U 338-E)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
ENERGY DIVISION

SUBJECT: Submission of Bilateral Agreement for Procurement of Renewable Energy

Southern California Edison Company ("SCE") submits this Advice Letter in compliance with Cal. Pub. Util. Code § 399.11 *et seq.* (the "RPS Legislation") seeking approval of a renewables portfolio standard ("RPS") power purchase agreement between SCE and PacifiCorp, a MidAmerican Energy Holdings Company (the "PacifiCorp Contract").

A table summarizing the PacifiCorp Contract is as follows:

Seller	Generation Type	Initial Size	Potential Expansion Size	Annual Energy Based on Contract Quantity	Estimated Annual Energy Based On Potential Expansion Size	Forecasted Initial Operation Date	Term of Agreement (Years)
PacifiCorp	Wind	573.6 MW	N/A	110 GWh (2009) 328 GWh (2010-2011) 329 GWh (2012)	N/A	On-line	4Q 2009 – 2012 (approximately 3.25 years)

SCE requests that the California Public Utilities Commission ("Commission" or "CPUC") issue a resolution containing findings in the form requested in this Advice Letter no later than September 10, 2009.

In accordance with General Order ("GO") 96-B, the confidentiality of information included in this Advice Letter is described below. This Advice Letter contains both confidential and public appendices as listed below.

Appendix A: Designation of Confidential Information

Confidential Appendix B: Pricing Analysis

Confidential Appendix C: 2008 Solicitation Overview and Workpapers

Confidential Appendix D: Confidential Contract Summary

Confidential Appendix E: PacifiCorp's Contribution to RPS Goals

Appendix F: SCE's RPS Proposal Evaluation and Selection Process and Criteria

Confidential Appendix G: AMF Calculator for PacifiCorp Contract

Appendix H: EEI's Master Power Purchase and Sale Agreement and Collateral Annex

Confidential Appendix I: First Amended and Restated Master Power Purchase and Sale Agreement Cover Sheet Between PacifiCorp and SCE

Confidential Appendix J: Paragraph 10 to the Collateral Annex to the First Amended and Restated Master Power Purchase and Sale Agreement Between PacifiCorp and SCE

Confidential Appendix K: Master Power Purchase and Sale Agreement Confirmation Letter Between PacifiCorp and SCE

Appendix L: Site Maps

Appendix M: Proposed Protective Order

I. INTRODUCTION

The RPS Legislation requires certain load-serving entities ("LSEs"), including SCE, to increase their procurement from renewable resources by at least one percent of their annual retail electricity sales per year so that 20 percent of their annual electricity sales are procured from eligible renewable energy resources by no later than December 31, 2010. In Decision ("D.") 03-06-071, the Commission provided its initial guidance for implementation of the RPS Legislation. In that decision, the Commission also authorized the investor-owned utilities ("IOUs") to enter into bilateral RPS contracts if the contracts are prudent and do not require public goods charge funds.

Furthermore, in D.06-10-019, the Commission held that RPS-obligated LSEs may enter into bilateral contracts with RPS-eligible generators, as long as the contracts are at least one month in duration. The Commission stated that IOUs' bilateral RPS contracts must be submitted to the Commission for approval by advice letter, and reiterated that bilateral RPS contracts are not eligible for supplemental energy payments. In addition,

the Commission held that while bilateral contracts are not subject to the market price referent ("MPR"), they must be reasonable.

In D.09-06-050, adopted by the Commission after the PacifiCorp Contract was executed, the Commission held that bilateral contracts should be reviewed according to the same processes and standards as contracts that come through a solicitation. Additionally, the Commission found that the MPR should be used as a price benchmark for the evaluation of long-term bilateral contracts.[1]

During the fall of 2008, PacifiCorp and SCE commenced discussions about contracting for renewable power from PacifiCorp's existing wind facilities. SCE and PacifiCorp then negotiated the final terms of the transaction resulting in the execution of the PacifiCorp Contract. SCE communicated with its procurement review group ("PRG") prior to execution of the PacifiCorp Contract.

A. Purpose of the Advice Letter

The PacifiCorp projects are six existing[2] wind facilities as described below. The seller under the PacifiCorp Contract is PacifiCorp, an energy utility serving approximately 1.7 million electric customers in six western states. PacifiCorp is wholly-owned by MidAmerican Energy Holdings Company, a subsidiary of Berkshire Hathaway. The projects were originally developed and constructed by PacifiCorp or Invenergy (Wolverine Creek Energy, LLC).

Facility	COD	Installed Capacity (MW)	Capacity Factor	City	County	State	Land Acreage	Leased or Owned	# of Turbines	Turbine Type
Wolverine Creek	02/12/06	64.5	31.0%	Iona	Bonneville & Bingham	ID	4,000	Leased	43	GE 1.5MW SLE
Leaning Juniper	09/14/06	100.5	34.7%	Arlington	Gilliam	OR	9,396	Leased	67	GE 1.5MW SLE
Marengo	08/03/07	140.4	32.0%	Dayton	Columbia	WA	17,610	Leased	78	Vestas 1.8MW V80
Marengo II	06/30/08	70.2	30.5%	Dayton	Columbia	WA		Leased	39	Vestas 1.8MW V80
Glenrock	12/31/08	99	37.4%	Glenrock	Converse	WY	14,000	Owned	66	GE 1.5MW SLE
Rolling Hills	01/17/09	99	33.8%	Glenrock	Converse	WY		Owned	66	GE 1.5MW SLE

1 The Commission also held that the contract review standards and processes set out in D.09-06-050 for very short-term contracts and moderately short-term contracts govern both bilateral contracts and contracts that are the result of a solicitation. The Energy Division has not yet established price benchmarks for very short-term and moderately short-term contracts.

2 The PacifiCorp projects are "existing" wind facilities in that they have all began commercial operations. However, all six facilities qualify as "new facilities" under the RPS statute and Commission precedent because they commenced commercial operations on or after January 1, 2005. *See* Cal. Pub. Util. Code § 399.14(b); D.07-05-028.

The PacifiCorp projects' expected deliveries under the PacifiCorp Contract will be approximately 110 GWh in 2009, 328 GWh in 2010 and 2011, and 329 GWh in 2012. The PacifiCorp Contract term is for approximately three and one quarter (3.25) years with the start of energy deliveries commencing October 1, 2009.[3]

B. General Project Description

Owner/Developer	PacifiCorp (5 projects) and Invenergy - Wolverine Creek Energy, LLC (1 project)[4]
Projects	Wolverine Creek, Leaning Juniper, Marengo, Marengo II, Glenrock, and Rolling Hills
Technology	Wind
Capacity (MW)	573.6 MW - See chart above for detail
Capacity Factor	33.4% weighted average - See chart above for detail
Expected Generation (MWh/Year)	110,400 MWh/year (2009) 327,600 MWh/year (2010) 327,600 MWh/year (2011) 328,800 MWh/year (2012)
On-line Date (if existing, the contract delivery start date)	Contract delivery start date is October 1, 2009
Contract Term (Years)	Approximately 3.25 years
New or Existing Facility	Existing
Location (include in/out-of-state) and Control Area (e.g., CAISO, BPA)	Out-of-state BPA and PacifiCorp control areas
Price relative to MPR (i.e., above/below)	Below

[3] As described in more detail in Appendix D, the PacifiCorp Contract is conditioned upon final Commission approval.

[4] In 2006, PacifiCorp contracted with Invenergy for the wind output from the 64.5 MW Wolverine Creek facility.

C. General Deal Structure of Contract

Under the PacifiCorp Contract, SCE will take delivery of electric energy and green attributes from the PacifiCorp projects at the Palo Verde trading hub and will use PacifiCorp's resources to manage the intermittent energy from the facilities within both BPA's and PacifiCorp's control areas. SCE will then import the energy into California in a manner that is compliant with the California Energy Commission's ("CEC") out-of-state RPS delivery requirements.

In managing the electric energy, SCE will employ the same fundamental economic principles as it does with its current (non-ERR)[5] power purchase agreements ("PPAs") for out-of-state resources by:

- Scheduling the energy directly into California upon receipt of the energy, and/or
- Selling the energy outside California, whichever yields the most value to SCE's customers.

Analogous to the scenarios described immediately above, SCE will self-manage the green attributes as follows by:

- Scheduling firmed and shaped energy with green attributes directly into California as an import, and/or
- Selling the energy without green attributes into the local market, and later (within the same calendar year that the facilities produced the energy) tagging import schedules with the green attribute identifier consistent with the CEC delivery requirements.[6]

In all scenarios, SCE will demonstrate delivery of the wind generation to an in-state market hub or in-state location as specified in the CEC's "Delivery Requirements" as required in the CEC RPS Eligibility Guidebook, including by:

- Importing energy into California within the same calendar year the PacifiCorp projects produce the respective energy, and
- Participating in the CEC's approved RPS tracking and verification system.

The following diagram illustrates the deal structure and energy management scenarios described in this section.

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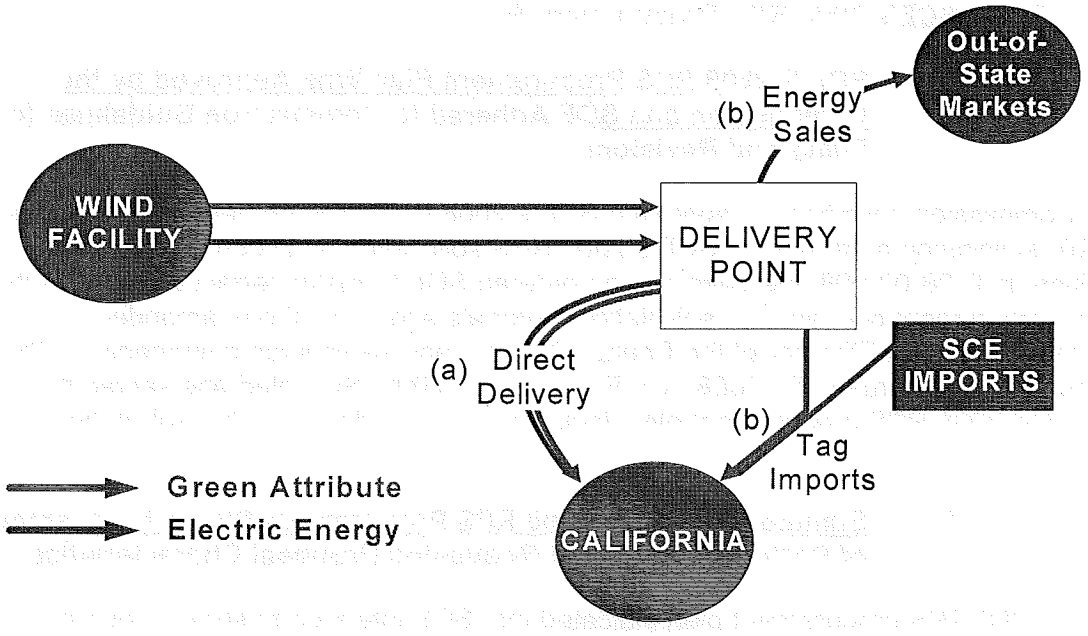
[5] "ERR" refers to an eligible renewable energy resource.

[6] *See* Renewables Portfolio Standard Eligibility Guidebook (Third Edition), publication # CEC-300-2007-006-ED3-CMF, adopted December 19, 2007.



II. CONSISTENCY WITH COMMISSION DECISIONS

A. Commission Decisions Allowing IOUs to Procure Renewable Resources Through Bilateral Negotiations

As discussed above, in D.03-06-071, the Commission authorized the IOUs to enter into bilateral RPS contracts outside of the competitive solicitation process if the contracts are prudent.[7] In D.06-10-019, the Commission reaffirmed that RPS-obligated LSEs may enter into bilateral contracts with RPS-eligible generators, as long as the contracts are at least one month in duration and are reasonable. In D.09-06-050, adopted by the Commission after the PacifiCorp Contract was executed, the Commission held that bilateral contracts should be reviewed according to the same processes and standards as contracts that come through a solicitation.

The PacifiCorp Contract was pursued bilaterally because the transaction was sourced through PacifiCorp's existing contractual relationship with SCE. As explained below and in the appendices, the PacifiCorp Contract is consistent with all Commission guidelines regarding bilateral contracting. Additionally, the price and other terms in the PacifiCorp Contract are reasonable. Accordingly, the PacifiCorp Contract should be approved by the Commission.

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[7] The Commission also held that bilateral contracts may not require supplemental energy payments from public goods charge funds. Supplemental energy payments were eliminated under Senate Bill ("SB") 1036. Pursuant to SB 1036, the Commission now approves above-market funds for RPS contracts.

B. SCE's 2008 RPS Procurement Plan

1. SCE'S 2008 RPS Procurement Plan Was Approved by the Commission and SCE Adhered to Commission Guidelines for Filing and Revisions

The Commission conditionally approved SCE's 2008 RPS procurement plan, including the bid solicitation materials for SCE's 2008 RPS solicitation, in D.08-02-008. In addition, in D.08-02-008, the Commission ordered SCE to make certain changes to its 2008 procurement plan and bid solicitation materials and to file those amended documents with the Director of the Energy Division, and serve such documents on the service list, by February 29, 2008. On February 29, 2008, SCE filed and served its amended 2008 RPS procurement plan, including its amended 2008 bid solicitation materials.

2. Summary of SCE's 2008 RPS Procurement Plan's Assessment of Portfolio Needs and Requested Proposal Characteristics

SCE's 2008 RPS procurement plan indicated that SCE intended to seek resources to augment those under contract as a result of prior solicitations and bilateral negotiations to the extent necessary to ensure that SCE meets the overall goal of 20 percent renewables as soon as possible with a reasonable margin of safety. SCE also indicated in its solicitation protocol that it has both a near-term and long-term need for renewable energy, and that SCE's evaluation criteria would favor proposals for renewable energy sales from generating facilities with near-term deliveries.

SCE's 2008 request for proposals ("RFP") solicited proposals to supply electric energy, green attributes, capacity attributes, and resource adequacy benefits from eligible renewable energy resources sufficient to permit SCE to execute PPAs in substantially the form of its *pro forma* agreement. SCE considered all timely proposals to sell product to SCE from either a new or existing generating facility that employed an eligible renewable energy resource, or multiple eligible renewable energy resources, as the sole means of supplying electric energy. SCE also considered any new or repowered facilities that operate on co-fired fuels or a mix of fuels that include fossil fuel hybrid.

SCE's locational preferences included: (1) California or (2) outside California if the seller complies with all requirements pertaining to "Out-of-State Facilities" as set forth in the CEC RPS Eligibility Guidebook. SCE requested proposals based upon standard term lengths of 10, 15, or 20 years, or a non-standard delivery term to be proposed by sellers that is no less than one month. SCE also requested proposals with a minimum capacity of 1.5 MW.

SCE indicated a preference to take delivery of the electric energy within the California Independent System Operator ("CAISO") control area. However, SCE also considered

proposals for facilities interconnected to the Western Electricity Coordinating Council ("WECC") transmission system.

3. The PacifiCorp Contract Conforms to SCE's Portfolio Needs

Although the PacifiCorp Contract was negotiated bilaterally outside of SCE's 2008 RPS solicitation, the PacifiCorp Contract falls within the criteria identified in SCE's 2008 RFP and is expected to contribute significantly toward achievement of SCE's RPS procurement goals. More specifically, the PacifiCorp Contract satisfies SCE's near-term need for eligible renewable energy from existing facilities with a total capacity of 573.6 MW over a three and one quarter-year term.

C. Least-Cost/Best-Fit ("LCBF") Methodology And Evaluation

1. SCE's LCBF Methodology for the 2008 RPS Solicitation

SCE evaluates and ranks proposals based on LCBF criteria that comply with criteria set forth by the Commission in D.03-06-071 and D.04-07-029 (the "LCBF Decisions"). The LCBF analysis evaluates both quantitative and qualitative aspects of each proposal, as well as each proposal's absolute value to SCE's customers and relative value in comparison to other proposals. The LCBF analysis was used to evaluate the bids SCE received in its 2008 RPS solicitation. SCE applied these criteria to the proposals received in its 2008 solicitation in order to establish a "short list" of proposals from bidders with whom SCE would engage in contract discussions.

While assumptions and methodologies have evolved slightly over time, the basic components of SCE's evaluation and selection criteria and process for RPS contracts were established in the Commission's LCBF Decisions. Consistent with those decisions, the three main steps undertaken by SCE are: (1) initial data gathering and verification, (2) a quantitative assessment of proposals, and (3) adjustments to selection based on proposals' qualitative attributes.

Prior to receiving proposals, SCE finalizes major assumptions and methodologies that drive valuation, including power and gas price forecasts, existing and forecast resource portfolio, and firm capacity value forecast. Other assumptions, such as the Transmission Ranking Cost Report ("TRCR"), are filed with the Commission for approval prior to the release of the solicitation materials.

Once proposals are received, SCE begins an initial review for completeness and conformity with the solicitation protocol. The review includes a screen for reasonableness of proposal parameters, such as generation profiles and capacity factors. SCE works directly with sellers to resolve any issues and ensure data is ready for evaluation.

After this initial review, SCE performs a quantitative assessment of each proposal. The result of the quantitative analysis is a relative ranking of proposals that helps define the preliminary short list.

In parallel with the quantitative analysis, SCE conducts an assessment of each proposal's qualitative attributes. This analysis assesses a project's technical viability, its overall viability, and its developer's experience. These qualitative attributes are then considered to either eliminate non-viable proposals or add projects with high viability to the final short list of proposals.

Following its analysis, SCE consults with its PRG regarding the final short list and specific evaluation criteria. Whether a proposal selected through this process results in an executed contract depends on the outcome of negotiations between SCE and counterparties. Periodically, SCE updates the PRG regarding the progress of negotiations. SCE and the PRG also review contracts prior to their execution. Subsequently, SCE executes contracts and submits them to the Commission for approval.

A complete discussion of SCE's RPS Proposal Evaluation and Selection Process and Criteria is provided in Appendix F.

2. Comparison of the PacifiCorp Contract With Proposals Received in SCE's 2008 RPS Solicitation With Regard to Each LCBF Factor

SCE evaluates the quantifiable attributes of each proposal individually and subsequently ranks them based on their benefit-to-cost ("B/C") ratios. Benefits are comprised of separate capacity and energy components, while costs include the contract payments, integration costs, transmission cost, and debt equivalence. SCE discounts the annual benefit and cost streams to a common base year prior to calculating the B/C ratio for each proposal. It is the B/C ratio that is used to rank and compare each project. Comparing the individual components of the B/C ratio of one bid to another is not a useful means of evaluating projects.

Although the PacifiCorp Contract was negotiated bilaterally outside of SCE's 2008 RPS solicitation, the B/C ratio calculated for the PacifiCorp Contract was acceptable to SCE and favorable as compared to the proposals SCE received in its 2008 solicitation. The benefits and costs for the PacifiCorp Contract resulted in a B/C ratio that ranked high enough as compared to the proposals SCE received in its 2008 RPS solicitation to demonstrate that the PacifiCorp Contract provides significant value for SCE's customers relative to the proposals received in SCE's solicitation, and represents a contract that provides for the delivery of relatively attractive near-term renewable power pursuant to terms and conditions that meet all of the requirements of the RPS Legislation and the Commission's decisions implementing the RPS Legislation. More detailed information regarding the B/C ratio for the PacifiCorp Contract is found in Appendices B and D. Additionally, as discussed in Appendices B and D, the PacifiCorp Contract compared

favorably to the proposals SCE received in its 2008 RPS solicitation based on other LCBF evaluation metrics.

3. Portfolio Fit – Demonstrate Best Fit – Evaluation of the Contract's Costs and Benefits in the Context of SCE's Portfolio Needs

SCE's primary portfolio needs in the long-term are for resource adequacy-eligible capacity, low-cost energy, and RPS-eligible energy. Due to the peaky nature of SCE's demand profile, energy delivered during on-peak periods is more highly valued than energy delivered during off-peak periods.

The PacifiCorp projects provide a total nameplate capacity of 573.6 MW. The projects will also provide approximately 110 GWh of RPS-eligible energy in 2009, approximately 328 GWh per year of RPS-eligible energy in 2010 and 2011, and approximately 329 GWh of RPS-eligible energy in 2012.

4. Transmission Adder – Consistency with Commission Decisions Addressing RPS Transmission Ranking Cost Methodology and Investor-Owned Utility TRCR

Transmission costs were estimated for those generating facilities that do not have an existing interconnection to the electric system or a completed transmission study, consistent with the TRCR requirements specified by D.04-06-013 and D.05-07-040. The ranking was applied accordingly and in compliance with Commission decisions.

5. Consistent Application of TODs – Demonstrate That Time of Delivery Allocation Factors Were Consistently Used Throughout the Procurement Process

Prior to releasing the 2008 RPS solicitation, SCE ensured the time-of-delivery ("TOD") allocation factors contained within its *pro forma* agreement were used in the LCBF analysis.

6. Qualitative factors

In addition to the identified benefits and costs quantified during SCE's evaluation, SCE assesses non-quantifiable characteristics of each proposal by conducting a comprehensive viability analysis to assess seller's capacity to perform, technical viability, and project viability as discussed in further detail in Appendix F. These qualitative attributes are used to consider the inclusion of additional sellers on the short list due to the strength of a particular seller's proposal. Pursuant to D.04-07-029, the presence of demonstrated qualitative attributes may justify moving a proposal onto SCE's short list of proposals if (a) the initial proposal rank is within reasonable valuation proximity to those selected for the short list and (b) SCE receives support from its PRG to elevate the proposal based on qualitative factors. This assessment may also result in

the exclusion of proposals from the short list due to the relative weakness of highly-ranked proposals. In other instances, where there are weaknesses in some of these factors (although these may not be significant enough to exclude a proposal from the short list), SCE utilizes additional contract requirements to manage these issues during the development of the project.

Although the PacifiCorp Contract was negotiated bilaterally outside of SCE's 2008 RPS solicitation, based on some non-quantifiable attributes as well as the quantifiable attributes discussed above, the PacifiCorp Contract compares favorably to the projects on SCE's 2008 RPS solicitation short list. There are no viability concerns with the PacifiCorp projects because they are existing projects that began commercial operations between 2006 and early 2009. The PacifiCorp Contract will also provide near-term eligible renewable energy in 2009 through 2012, when it is most needed by SCE. In addition, based on PacifiCorp's past development experience and the fact that PacifiCorp is a regulated utility, it is likely PacifiCorp will be able to perform all of its financial and other obligations under the agreement.

7. Impact of Debt Equivalence

Specific information regarding the impact of debt equivalence on the PacifiCorp Contract is found in Appendix D.

D. PRG Participation And Feedback

1. PRG Members

SCE's PRG was formed on or around September 10, 2002. Participants include representatives from the Commission's Energy and Legal Divisions, the Division of Ratepayer Advocates, The Utility Reform Network, the Natural Resources Defense Council, California Utility Employees, the Union of Concerned Scientists, and the California Department of Water Resources.

2. Date Information Provided to PRG

SCE consulted with its PRG during each step of the renewable procurement process. Among other things, SCE informed the PRG of the initial results of its RFP, explained the evaluation process, and updated the PRG periodically concerning the status of contract formation.

On May 27, 2009, SCE advised the PRG of its conclusion of negotiations with PacifiCorp and its intentions to execute the PacifiCorp Contract.

3. PRG Feedback

SCE does not keep recorded minutes, notes, or comments from PRG meetings. The PRG has requested that SCE not broadly characterize PRG responses and comments.

E. RPS Goals

As stated above, the RPS Legislation and the Commission decisions implementing the RPS Legislation require SCE to increase its procurement from renewable resources by at least one percent of its annual retail electricity sales per year so that 20 percent of its annual electricity sales are procured from renewable resources by 2010. The one percent increase per year has been defined as the incremental procurement target ("IPT") and the yearly required total has been defined as the annual procurement target ("APT").[8] By definition, the obligation to increase renewable procurement by one percent per year (*i.e.*, the IPT) is eliminated in 2010. For 2010 and beyond, SCE is required to procure 20 percent of its energy from renewable resources. In other words, beyond 2009, SCE does not have an IPT obligation and its APT obligation remains at 20 percent.

The PacifiCorp Contract is expected to begin deliveries on October 1, 2009. The renewable output from the agreement is expected to contribute approximately 110 GWh in 2009, 328 GWh per year in 2010 and 2011, and 329 GWh in 2012.

A table summarizing the PacifiCorp Contract's contribution to SCE's RPS goals is found in Appendix E.

F. Standard Terms And Conditions

In D.04-06-014, the Commission established a number of "modifiable" and "non-modifiable" standard terms and conditions to be used by LSEs when contracting for RPS-eligible resources. In D.07-11-025, the Commission reduced the number of "non-modifiable" terms to the following four terms: (1) "CPUC Approval," (2) "RECs and Green Attributes," (3) "Eligibility," and (4) "Applicable Law." The remaining "non-modifiable" terms were converted to "modifiable." In D.08-04-009, the Commission compiled the standard terms and conditions in one document and deleted the "modifiable" standard term and condition on supplemental energy payments from the standard terms and conditions. In D.08-08-028, the Commission revised the "non-modifiable" "RECs and Green Attributes" standard term and condition.

The PacifiCorp Contract includes the four "non-modifiable" terms identified above without change.

In addition, as permitted by D.04-06-014, D.07-11-025, and D.08-04-009, SCE modified most if not all of the "modifiable" terms. These modifications, however, include the same principles and serve the same purpose as the standard terms, and are consistent with the law and government regulations. Thus, the modifications contained in the PacifiCorp Contract are permissible.

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[8] *See* D.06-10-050.

G. Minimum Quantity

In D.07-05-028, the Commission held that, beginning in 2007, each LSE obligated under the RPS program must enter into long-term contracts[9] or short-term contracts with new facilities[10] for energy deliveries equivalent to 0.25 percent of that LSE's prior year's retail sales, in order to be able to count for RPS compliance energy deliveries from short-term contracts with existing facilities. The Commission also ruled that RPS-obligated LSEs may carry forward contracted energy in long-term contracts and short-term contracts with new facilities that is in excess of the 0.25 percent requirement in the year such contracts are signed, to be used for compliance for the minimum quantity requirement in future years.

The PacifiCorp Contract is a short-term contract with new facilities as the PacifiCorp facilities all commenced commercial operations on or after January 1, 2005. Accordingly, the minimum quantity requirement does not apply.

H. Interim Emissions Performance Standard

The California Legislature passed SB 1368 on August 31, 2006 and Governor Schwarzenegger signed the bill into law on September 29, 2006. Section 2 of SB 1368 added Cal. Pub. Util. Code § 8341(a), which provides that "No load-serving entity or local publicly owned electric utility may enter into a long-term financial commitment unless any baseload generation supplied under the long-term financial commitment complies with the greenhouse gases emission performance standard established by the commission, pursuant to subdivision (d)."[11]

To implement the provisions of SB 1368, the Commission instituted Rulemaking 06-04-009. This proceeding resulted in the establishment of a green house gas ("GHG") emissions performance standard ("EPS"), for carbon dioxide ("CO_2"). The Commission noted, "SB 1368 establishes a minimum performance requirement for any long-term financial commitment for baseload generation that will be supplying power to California ratepayers. The new law establishes that the GHG emissions rates for these facilities must be no higher than the GHG emissions rate of a combined-cycle gas turbine (CCGT) powerplant."[12]

The decision further explains:

> SB 1368 describes what types of generation and financial commitments will be subject to the EPS ("covered procurements"). Under SB 1368, the EPS applies to "baseload generation," but the requirement to comply with it

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9 Long-term contracts are contracts of at least 10 years duration.
10 New facilities are facilities that commenced commercial operation on or after January 1, 2005.
11 Cal. Pub. Util. Code § 8341(a).
12 D.07-01-039 at 2-3.

> is triggered only if there is a "long-term financial commitment" by an LSE. The statute defines baseload generation as "electricity generation from a powerplant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60%." . . . For baseload generation procured under contract, there is a long-term commitment when the LSE enters into "a new or renewed contract with a term of five or more years."[13]

By this Advice Letter filing, SCE requests that the Commission approve the short-term PacifiCorp Contract, which has a term of approximately three and one quarter years. Because the PacifiCorp Contract is not a "long-term financial commitment" (i.e., a "new contract or renewed contract with a term of five or more years"), the PacifiCorp Contract is not subject to the EPS.

I. MPR and Above-Market Funds ("AMFs")

As discussed in more detail in Appendix D, the PacifiCorp Contract is below the 2008 MPR and therefore no AMFs are required based on the energy price. Additionally, because the PacifiCorp Contract is a short-term contract that was negotiated bilaterally, the contract is not eligible for AMFs pursuant to Cal. Pub. Util. Code § 399.15(d)(2).

III. PROJECT DEVELOPMENT STATUS

There are no viability concerns regarding the PacifiCorp Contract. The PacifiCorp projects are existing facilities that began commercial operations between 2006 and early 2009 and are currently delivering power.

A. Site control

PacifiCorp has full site control. The projects are existing facilities that began commercial operations between 2006 and early 2009 and are currently delivering power.

B. Resource and/or Availability of Fuel

The PacifiCorp facilities (Wolverine Creek, Leaning Juniper, Marengo, Marengo II, Glenrock, and Rolling Hills) are existing facilities using wind technology. The facilities began commercial operations between 2006 and early 2009 and are currently delivering power.

C. Transmission

There are no transmission or interconnection issues with the PacifiCorp projects. The generating facilities are already connected to BPA's and PacifiCorp's control areas

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[13] *Id.* at 4.

under existing interconnection agreements and no upgrades are needed. PacifiCorp will firm and shape the energy and deliver it to the Palo Verde trading hub for SCE. Additional information regarding transmission is included in Appendix D.

D. Technology Type and Level of Technology Maturity

The PacifiCorp projects utilize 242 GE 1.5 MW and 117 Vestas 1.8 MW wind turbine generators that are already in operation.

E. Permitting

The PacifiCorp facilities are operating power plants currently delivering power. All permits necessary to operate the facilities have been obtained.

F. Developer Experience

In 2006, PacifiCorp contracted with Invenergy for the wind output from the 64.5 MW Wolverine Creek facility. After that, later in 2006, PacifiCorp built the 100.5 MW Leaning Juniper wind facility in Oregon. Since 2006, PacifiCorp has built numerous wind facilities, including Marengo, Marengo II, Glenrock, and Rolling Hills. PacifiCorp has also announced the construction of two additional wind facilities. Since the PacifiCorp projects under contract in the PacifiCorp Contract began commercial operations between 2006 and early 2009, PacifiCorp has demonstrated its ability to successfully build and operate wind facilities.

G. Financing plan

Specific information regarding financing for the PacifiCorp Contract is found in Appendix D.

H. Production Tax Credit/Investment Tax Credit

Specific information regarding production tax credits ("PTCs") and investment tax credits ("ITCs") for the PacifiCorp Contract is found in Appendix D.

I. Equipment Procurement

All necessary equipment has been purchased and is operating at the facilities.

IV. CONTINGENCIES AND MILESTONES

A. Major Performance Criteria and Guaranteed Milestones

Specific information regarding the terms of the PacifiCorp Contract is found in Appendix D.

B. Other Contingencies and Milestones

Specific information regarding the terms of the PacifiCorp Contract is found in Appendix D.

V. REGULATORY PROCESS

A. RPS-eligibility Certification from the CEC

To date, PacifiCorp has received RPS-eligibility certification from the CEC for the Wolverine Creek, Leaning Juniper, Marengo, and Marengo II wind facilities. The Glenrock and Rolling Hills wind facilities are currently under CEC review and neither SCE nor PacifiCorp foresee any issues with obtaining CEC certification. In order for the output of a facility to be included in SCE's purchases under the PacifiCorp Contract, CEC certification is required.

B. Justification for Effective Date

The PacifiCorp projects are existing facilities that are currently operating. Moreover, energy deliveries under the PacifiCorp Contract commence on October 1, 2009. In order to allow for deliveries under the PacifiCorp Contract to begin as soon as possible, SCE requests that this Advice Letter become effective on September 10, 2009. The justification of the effective date is discussed in more detail in Appendix D.

C. Contractual Obligations Impacting CPUC Approval Schedule

Specific information regarding the terms of the PacifiCorp Contract is found in Appendix D.

D. Earmarking

SCE reserves the right to earmark any generation from the PacifiCorp Contract into RPS compliance years as applicable.

E. Confidentiality

SCE is requesting confidential treatment of Appendices B through E, G, and I through K to this Advice Letter. The information for which SCE is seeking confidential treatment is identified in Appendix A. The confidential version of this Advice Letter will be made available to appropriate parties (in accordance with SCE's Proposed Protective Order, as discussed below) upon execution of the required non-disclosure agreement. Parties wishing to obtain access to the confidential version of this Advice Letter may contact Cathy Karlstad in SCE's Law Department at Cathy.Karlstad@sce.com or (626) 302-1096 to obtain a non-disclosure agreement. In accordance with GO 96-B, a copy of SCE's Proposed Protective Order is attached hereto as Appendix M. It is appropriate to accord confidential treatment to the information for which SCE requests confidential treatment in the first instance in the advice letter process because such

information is entitled to confidential treatment pursuant to D.06-06-066 and is required to be filed by advice letter as part of the process for obtaining Commission approval of RPS PPAs.

The information in this Advice Letter for which SCE requests confidential treatment, the pages on which the information appears, and the length of time for which the information should remain confidential, are provided in Appendix A. This information is entitled to confidential treatment pursuant to D.06-06-066 (as provided in the IOU Matrix). The specific provisions of the IOU Matrix that apply to the confidential information in this Advice Letter are identified in Appendix A.

The confidential information provided in this Advice Letter cannot be aggregated, redacted, summarized, masked, or otherwise protected in a manner that would allow partial disclosure of the data, while still protecting confidential information, because the RPS contract advice letter filing template calls for the data to be provided in its present form. SCE would object to any disclosure of the confidential information in aggregated form. Based on the format of the RPS contract advice letter filing template, SCE is not aware of any manner that the confidential information could be aggregated that would qualify the information for public status under the IOU Matrix of D.06-06-066.

To the best of my knowledge, SCE maintains as confidential the information contained in this Advice Letter for which confidentiality is sought. SCE is informed and believes that this information is maintained by SCE's Renewable and Alternative Power department and provided internally only to those employees who need to know the information to carry out their job duties. SCE is also informed and believes that this information has not been disclosed to any person other than employees of SCE or non-market participants (such as the PRG).

TIER DESIGNATION

Pursuant to D.07-01-024, Energy Industry Rule 5.3, SCE submits this Advice Letter with a Tier 3 designation (effective after Commission approval).

REQUEST FOR COMMISSION APPROVAL

The PacifiCorp Contract is conditioned on the occurrence of "CPUC Approval," as it is defined in the PacifiCorp Contract. In order to satisfy that condition with respect to the PacifiCorp Contract, SCE requests that the Commission issue a resolution no later than September 10, 2009, containing:

1. Approval of the PacifiCorp Contract in its entirety;

2. A finding that any electric energy sold or dedicated to SCE pursuant to the PacifiCorp Contract constitutes procurement by SCE from an eligible renewable energy resource ("ERR") for the purpose of determining SCE's compliance with any obligation that it may have to procure from ERRs pursuant to the RPS

Legislation or other applicable law concerning the procurement of electric energy from renewable energy resources;

3. A finding that all procurement under the PacifiCorp Contract counts, in full and without condition, towards any annual procurement target established by the RPS Legislation or the Commission which is applicable to SCE;

4. A finding that all procurement under the PacifiCorp Contract counts, in full and without condition, towards any incremental procurement target established by the RPS Legislation or the Commission which is applicable to SCE;

5. A finding that all procurement under the PacifiCorp Contract counts, in full and without condition, towards the requirement in the RPS Legislation that SCE procure 20% (or such other percentage as may be established by law) of its retail sales from ERRs by 2010 (or such other date as may be established by law);

6. A finding that the PacifiCorp Contract, and SCE's entry into the PacifiCorp Contract, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the PacifiCorp Contract, subject only to further review with respect to the reasonableness of SCE's administration of the PacifiCorp Contract; and

7. Any other and further relief as the Commission finds just and reasonable.

EFFECTIVE DATE

This Advice Letter will become effective on September 10, 2009.

NOTICE

Anyone wishing to protest this Advice Letter may do so by letter via U.S. Mail, facsimile, or electronically, any of which must be received by the Energy Division and SCE no later than 20 days after the date of this Advice Letter. Protests should be mailed to:

Akbar Jazayeri
Vice President of Regulatory Operations
Southern California Edison Company
2244 Walnut Grove Avenue, Quad 3D
Rosemead, California 91770
Facsimile: (626) 302-4829
E-mail: AdviceTariffManager@sce.com

Bruce Foster
Senior Vice President, Regulatory Affairs
c/o Karyn Gansecki
601 Van Ness Avenue, Suite 2040
San Francisco, California 94102
Facsimile: (415) 929-5540
E-mail: Karyn.Gansecki@sce.com

Stuart Hemphill
Senior Vice President, Power Procurement
c/o Mike Marelli
Southern California Edison Company
2244 Walnut Grove Avenue, Quad 4D
Rosemead, CA 91770
Facsimile: (626) 302-1103
E-mail: Mike.Marelli@sce.com

With a copy to:

Cathy Karlstad
Attorney
Southern California Edison Company
2244 Walnut Grove Avenue, 3rd Floor
Rosemead, CA 91770
Facsimile: (626) 302-1935
E-mail: Cathy.Karlstad@sce.com

There are no restrictions on who may file a protest, but the protest shall set forth specifically the grounds upon which it is based and shall be submitted expeditiously.

In accordance with Section 4 of GO 96-B, SCE is furnishing copies of this Advice Letter to the interested parties shown on the attached R.08-08-009, R.06-02-012, and GO 96-B service lists. Address change requests to the GO 96-B service list should be directed to AdviceTariffManager@sce.com or at (626) 302-2930. For changes to any other service list, please contact the Commission's Process Office at (415) 703-2021 or at Process_Office@cpuc.ca.gov.

Further, in accordance with Public Utilities Code Section 491, notice to the public is hereby given by filing and keeping the Advice Letter at SCE's corporate headquarters. To view other SCE advice letters filed with the Commission, log on to SCE's web site at http://www.sce.com/AboutSCE/Regulatory/adviceletters/.

All questions concerning this Advice Letter should be directed to Laura Genao at (626) 302-6842 (E-mail: Laura.Genao@sce.com).

Southern California Edison Company

Akbar Jazayeri

AJ:lg:jm
Enclosures

Appendix A

Designation of Confidential Information

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

DWS-18

Resolution E-4264. Southern California Edison (SCE) Company renewable portfolio standard power purchase agreement with PacifiCorp, a MidAmerican Energy Holdings Company.

January 28, 2009

Date of Issuance – 10/19/09

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4264
October 15, 2009

Redacted

RESOLUTION

Resolution E-4264. Southern California Edison (SCE) Company. PROPOSED OUTCOME: This Resolution approves cost recovery for a renewable portfolio standard power purchase agreement with PacifiCorp, a MidAmerican Energy Holdings Company.

ESTIMATED COST: Actual costs of the power purchase agreement are confidential at this time.

By Advice Letter 2357-E filed on July 1, 2009 and Advice Letter 2357-E-A filed on September 30, 2009.

SUMMARY

Southern California Edison's PacifiCorp contract complies with the renewables portfolio standard guidelines and is approved

Southern California Edison (SCE) filed advice letter (AL) 2357-E on July 1, 2009 requesting Commission review and approval of a short-term, bilateral renewable energy power purchase agreement (PPA) executed with PacifiCorp. SCE filed AL 2357-E-A on September 30, 2009 to correct a few calculations in the confidential Appendices of the advice letter.

Generating facilities	Type	Term (Years)	Contract Capacity (MW)	Energy (GWh)	Contract Start Date	Location
1) Wolverine Creek 2) Leaning Juniper 3) Marengo 4) Marengo II 5) Glenrock 6) Rolling Hills	Wind, online[1]	3.25	50	110 (2009) 328 (2010) 328 (2011) 329 (2012)	October 1, 2009	Wind facilities located in ID, OR, WA, WY. PacifiCorp will deliver energy to SCE at Palo Verde

PacifiCorp owns and/or takes delivery of renewable energy from the above-listed wind farms, located in several western states. Under this PPA, PacifiCorp will sell SCE green attributes from these facilities and sell 50 MW firm to SCE at the Palo Verde trading hub in Arizona. The green attributes may come from any of the six wind facilities listed above, as long as the facility has received its RPS eligibility certification from the California Energy Commission (CEC). SCE will either sell the energy and replace it at a later date with an equivalent amount of energy for import to California, or deliver the energy into California upon receipt. In either event, SCE's imports into California under the PPA shall be consistent with the CEC's RPS delivery guidelines.

The proposed contract price is reasonable, and all costs of the contract are fully recoverable in rates over the life of the contract, subject to Commission review of SCE's administration of the contract.

AL 2357-E and AL 2357-E-A is approved without modification.

Confidential information about the contract should remain confidential

This resolution finds that certain material filed under seal pursuant to Public Utilities Code Section 583, General Order (G.O.) 66-C, and D.06-06-066 should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations.

Pursuant to D.06-06-066 and the decision's Appendix I "IOU Matrix", this Commission adopted a "window of confidentiality" for individual contracts for RPS energy or capacity. Specifically, this Commission determined that RPS

[1] Although the facilities are already operating, they were built after January 1, 2005 and are considered "new" pursuant to statutory rules.

contracts should be confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their own affiliates, which should be public.

BACKGROUND

The RPS Program requires each utility to increase the amount of renewable energy in its portfolio

The California RPS Program was established by Senate Bill (SB) 1078[2], and has been subsequently modified by SB 107[3] and SB 1036[4]. The RPS program is set out at Public Utilities (PU) Code Section 399.11, et seq. An RPS policy generally requires that a retail seller of electricity, such as SCE, purchase a certain percentage of electricity generated by Eligible Renewable Energy Resources (ERR). Under the California RPS, each utility is required to increase its total procurement of ERRs by at least 1% of annual retail sales per year so that 20% of its retail sales are supplied by ERRs by 2010. Also, on November 17, 2008, Governor Schwarzenegger issued Executive Order S-14-08, setting a goal for energy retailers to deliver 33 percent of electrical energy from renewable resources by 2020.[5]

In response to SB 1078, SB 107, and SB 1036, the Commission has issued a series of decisions and resolutions that establish the regulatory and transactional parameters of the utility renewables procurement program.

- On June 19, 2003, the Commission issued its "Order Initiating Implementation of the Senate Bill 1078 Renewable Portfolio Standard Program," D.03-06-071.[6]
- Instructions for utility evaluation of each offer to sell ERRs requested in an RPS solicitation were provided in D.04-07-029[7], as required by PU Code Section 399.14(a)(2)(B). The bid evaluation methodology is known as 'least-cost, best-fit'.

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[2] SB 1078 (Sher, Chapter 516, Statutes of 2002)
[3] SB 107 (Simitian, Chapter 464, Statutes of 2006)
[4] SB 1036 (Perata, Chapter 685, Statutes of 2007)
[5] http://gov.ca.gov/executive-order/11072/
[6] http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/27360.PDF
[7] http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/38287.PDF

- The Commission adopted standard terms and conditions (STCs) for RPS power purchase agreements in D.04-06-014, as required by PU Code Section 399.14(a)(2)(D). These STCs are compiled in D.08-04-009[8], as modified by D.08-08-028[9], and as a result, there are now thirteen STCs of which four are non-modifiable.
- D.06-10-050, as modified by D.07-03-046, compiled the RPS reporting and compliance methodologies.[10] In this decision, the Commission established methodologies to calculate a retail seller's initial baseline procurement amount, annual procurement target (APT) and incremental procurement amount (IPT).[11]
- The Commission adopted its market price referent (MPR) methodology in D.04-06-015[12] for determining the market price of energy, as defined in PU Code Sections 399.14(a)(2)(A) and 399.15(c); the MPR serves as a cost containment tool because the above-MPR contract costs of RPS contracts are limited (PU Code Section 399.15[d]). The Commission refined the MPR methodology for the 2005 RPS Solicitation in D.05-12-042.[13] Subsequent resolutions adopted MPR values for the 2005, 2006, 2007, and 2008 RPS solicitations.[14]
- In D.06-10-019[15], the Commission adopted rules for the eligibility and approval of RPS short-term contracts (procurement contracts that are less

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[8] http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/81269.PDF
[9] http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/86954.pdf
[10] D.06-10-050, Attachment A, (http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/61025.PDF) as modified by D.07-03-046 (http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/65833.PDF)
[11] The IPT represents the amount of RPS-eligible procurement that the LSE must purchase, in a given year, over and above the total amount the LSE was required to procure in the prior year. An LSE's IPT equals at least 1% of the previous year's total retail electrical sales, including power sold to a utility's customers from its DWR contracts.
[12] http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/37383.pdf
[13] http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/52178.pdf
[14] Respectively, Resolution E-3980: http://www.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/55465.DOC, Resolution E-4049: http://www.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/63132.doc, Resolution E-4118: http://www.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/73594.pdf Resolution E-4214: http://docs.cpuc.ca.gov/Published/Final_resolution/95553.htm
[15] http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/60585.PDF

than 10 years in duration) and bilateral contracts (procurement contracts that are negotiated outside of a competitive RPS solicitation).

- Resolutions E-4160[16] and E-4199[17] implemented SB 1036, which modified the RPS cost containment mechanism. The Commission established cost limitations for each investor-owned utility (IOU) and set forth guidelines for approving above-MPR RPS contracts negotiated through a competitive solicitation.
- In D.07-05-028, the Commission established a minimum quota for contracting with new facilities or executing long-term contracts for RPS-eligible generation. Specifically, in order for an LSE to count a short-term contract with an existing facility for RPS compliance, the LSE must enter into long-term contracts or contracts with new facilities for energy deliveries equivalent to at least 0.25% of that LSE's prior year's retail sales.[18]
- The Commission established guidelines for a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process (D.03-06-071 and D.06-10-019). More recently, in D.09-06-050, this Commission determined that bilateral RPS contracts should be evaluated using the same methods and criteria that are used to review contracts that result from a competitive solicitation. This requires, for example, review by the utility's PRG and its Independent Evaluator. This also includes a comparison of the proposed agreement to RPS opportunities received in its annual solicitations and other RPS-eligible procurement options.
- D.09-06-050 established review and approval processes for short term contracts. The fast-track review process allows an RPS contract that is less than 10 years in duration to be submitted by tier 2, rather than tier 3, advice letter if the contract meets specified criteria. Short-term contracts that do not meet such criteria can still be filed by tier 3 advice letter. The Decision requires Energy Division staff to establish pricing criteria for short-term contracts that are submitted by tier 2 and tier 3 advice letters.

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[16] http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/81476.PDF
[17] http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/98603.PDF
[18] The term of a "short-term" contract is less than ten years. A "new" facility must have commenced commercial operations after January 1, 2005.

Before the criteria are adopted, short-term contracts can be reviewed on a case by case basis.

Energy from RPS facilities located out-of-state must be delivered to California

The California Energy Commission (CEC) is responsible for certifying the eligibility of renewable energy facilities for the RPS program, as well as verifying and tracking the generation and delivery of renewable energy claimed for compliance with the RPS program. If a renewable energy facility has its first point of interconnection to the transmission network outside of California, it must satisfy all of the following additional requirements:[19]

1. It is connected to the transmission network within the Western Electricity Coordinating Council (WECC) service territory.
2. It commences initial commercial operation after January 1, 2005.
3. Electricity produced by the facility is delivered to an in-state location.
4. It will not cause or contribute to any violation of a California environmental quality standard or requirement.
5. If the facility is outside of the United States, it is developed and operated in a manner that is as protective of the environment as a similar facility located in the state.
6. It participates in the Western Renewable Energy Generation Information System (WREGIS), the accounting system to verify compliance with the renewables portfolio standard by retail sellers

While facilities located in California or with their first point of interconnection in the state are automatically deemed "delivered", eligible renewable energy from out-of-state facilities must be "scheduled for consumption by California end-use retail customers" to be counted for compliance with the RPS program.[20] The RPS statute also allows "electricity generated by an eligible renewable energy resource [to] be considered 'delivered' regardless of whether the electricity is generated at a different time from consumption by a California end-use customer."[21]

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[19] Public Resources (PR) Code 25741(b)(2)(B)
[20[PR Code Section 25741(a)
[21] Id

The CEC's RPS Eligibility Guidebook[22] says that in practical terms, this means that out-of-state energy may be "firmed" and "shaped", or backed up or supplemented with delivery from another source, before it is delivered to California. The CEC's Guidebook provides three examples of eligible delivery structures, and essentially allows a generator, third party, or the IOU to firm and shape RPS contracts.[23]

For each advice letter requesting CPUC approval of a PPA with an out-of-state RPS facility, the CEC provides written documentation to the CPUC addressing whether a proposed RPS contract's delivery structure would be eligible pursuant to the guidelines in the CEC's Guidebook.

Interim Greenhouse Gas Emissions Performance Standard (EPS) established emission rate limitations for long-term electricity procurement

A greenhouse gas emissions performance standard (EPS) was established by Senate Bill 1368[24], which requires that the Commission consider emissions costs associated with new long-term (five years or greater) power contracts procured on behalf of California ratepayers.

On January 25, 2007, the Commission approved D.07-01-039 which adopted an interim EPS that establishes an emission rate quota for obligated facilities to levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine powerplant.[25] The EPS applies to all energy contracts for baseload generation that are at least five years in duration.[26] Renewable energy contracts are deemed EPS compliant from the EPS except in cases where intermittent renewable energy is shaped and firmed with generation from non-renewable resources. If the renewable energy contract is shaped and firmed with a specified energy source that is considered baseload generation, then the energy source

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[22] http://energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF
[23] pg 23-24
[24] Chapter 464, Statutes of 2006 (SB 1368)
[25] D.07-01-039 adopted an emission rate of 1,100 pounds of carbon dioxide per megawatt-hour for the proxy CCGT (section 1.2, page 8)
http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/64072.PDF
[26] "Baseload generation" is electricity generation at a power plant "designed and intended to provide electricity at an annualized plant capacity factor of at least 60%." § 8340 (a).

must individually meet the EPS. If, however, the intermittent energy is firmed and shaped with an unspecified energy source (e.g. system power), then D.07-01-039 specifically defines the following eligibility condition:

> *For specified contracts with intermittent renewable resources (defined as solar, wind and run-of-river hydroelectricity), the amount of substitute energy purchases from unspecified resources is limited such that total purchases under the contract (whether from the intermittent renewable resource or from substitute unspecified sources) do not exceed the total expected output of the specified renewable powerplant over the term of the contract.* [27]

SCE requests Commission approval of a renewable energy contract

On July 1, 2009, SCE filed AL 2357-E, requesting Commission review and approval of a PPA with PacifiCorp. SCE filed supplemental Al 2357-E-A on September 30 to correct a few calculation errors in the confidential Appendices of Al 2356-E. The short-term PPA results from bilateral negotiations. The output from PacifiCorp's wind facilities will be firmed and shaped and delivered to SCE at the Palo Verde trading hub; SCE will deliver the energy to California. The PPA will contribute energy deliveries towards SCE's renewable procurement goal required by California's RPS statute.[28] SCE requests that the Commission issue a resolution no later than September 10, 2009, containing:

1. Approval of the PacifiCorp Contract in its entirety;
2. A finding that any electric energy sold or dedicated to SCE pursuant to the PacifiCorp Contract constitutes procurement by SCE from an eligible renewable energy resource ("ERR") for the purpose of determining SCE's compliance with any obligation that it may have to procure from ERRs pursuant to the RPS Legislation[29] or other applicable law concerning the procurement of electric energy from renewable energy resources;

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[27] D.07-01-039, Conclusion of Law 40. Note: These compliance rules specifically apply to IOUs, additional compliance rules may apply to other RPS-obligated load serving entities.
[28] The California Energy Commission is responsible for determining the RPS-eligibility of a renewable generator. See PU Code Section 399.12 and D.08-04-009, as modified by D.08-08-028.
[29] As defined by SCE, "'RPS Legislation' refers to the current State of California Renewable Portfolio Standard program statute, as codified at California Public Utilities Code Section 399.11 *et seq.*"

3. A finding that all procurement under the PacifiCorp Contract counts, in full and without condition, towards any annual procurement target established by the RPS Legislation or the Commission which is applicable to SCE;
4. A finding that all procurement under the PacifiCorp Contract counts, in full and without condition, towards any incremental procurement target established by the RPS Legislation or the Commission which is applicable to SCE;
5. A finding that all procurement under the PacifiCorp Contract counts, in full and without condition, towards the requirement in the RPS Legislation that SCE procure 20% (or such other percentage as may be established by law) of its retail sales from ERRs by 2010 (or such other date as may be established by law);
6. A finding that the PacifiCorp Contract, and SCE's entry into the PacifiCorp Contract, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the PacifiCorp Contract, subject only to further review with respect to the reasonableness of SCE's administration of the PacifiCorp Contract; and
7. Any other and further relief as the Commission finds just and reasonable.

SCE's Procurement Review Group participated in review of the contracts

In D. 02-08-071, the Commission required each utility to establish a "Procurement Review Group" (PRG) whose members, subject to an appropriate non-disclosure agreement, would have the right to consult with the utilities and review the details of:

1. Overall transitional procurement strategy;
2. Proposed procurement processes including, but not limited to, RFO; and
3. Proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review.

SCE's PRG was formed on or around September 10, 2002. Participants include representatives from the Commission's Energy and Legal Divisions, the Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), the Natural Resources Defense Council, California Utility Employees, the Union of

Concerned Scientists, Aglet Consumer Alliance and the California Department of Water Resources.

SCE says that they communicated with the PRG prior to the execution of the PacifiCorp contract.

Although Energy Division is a member of the PRG, it reserved its judgment on the contracts until the resolution process. Energy Division reviewed the transactions independent of the PRG, and allowed for a full protest period before concluding its analysis.

NOTICE

Notice of AL 2357-E was made by publication in the Commission's Daily Calendar. SCE states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

Advice Letters 2357-E and 2357-E-A were not protested.

DISCUSSION

Description of the project

The following table summarizes the substantive features of the proposed PPA. See confidential Appendix A for a discussion of the contracts' confidential terms and conditions.

Generating facilities	Type	Term (Years)	Contract Capacity (MW)	Energy (GWh)	Contract Start Date	Location
1) Wolverine Creek 2) Leaning Juniper 3) Marengo 4) Marengo II 5) Glenrock 6) Rolling Hills	Wind, online[30]	3.25	50	110 (2009) 328 (2010) 328 (2011) 329 (2012)	October 1, 2009	Wind facilities located in ID, OR, WA, WY. PacifiCorp will deliver energy to SCE at Palo Verde

The PacifiCorp contract is a bilateral contract for wind generation. Under this PPA, PacifiCorp will deliver 50 MW firm and an equivalent amount of green attributes to SCE at the Palo Verde trading hub. The green attributes may come from any of the six wind facilities listed above, as long as the facility has received its RPS eligibility certification from the CEC. SCE will either sell the energy and replace it at a later date with an equivalent amount of energy for import to California, or deliver the energy into California upon receipt. In either event, SCE's imports into California under the PPA shall be consistent with the CEC's RPS delivery guidelines. The PacifiCorp project is favorable relative to the bids in SCE's 2008 solicitation because it provides near-term energy deliveries at a reasonable cost.

This contract was evaluated on the following criteria:

- Consistency with SCE's 2008 Procurement Plan
- Compliance with relevant Commission decisions regarding bilateral contracting guidelines, standard terms and conditions and the Emissions Performance Standard
- Project is viable
- Price reasonableness
- Consistency with the RPS delivery rules, as set forth in the CEC's RPS Eligibility Guidebook

[30] Although the facilities are already operating, they were built after January 1, 2005 and are considered "new" pursuant to statutory rules.

PPA is consistent with SCE's 2008 RPS Procurement Plan

The Commission must accept or reject proposed PPAs based on their consistency with the utility's approved renewable energy procurement plan (Plan).[31] SCE's 2008 Plan includes an assessment of supply and demand for renewable energy and bid solicitation materials, including a pro-forma agreement and bid evaluation methodology documents.

The Commission conditionally approved SCE's 2008 RPS procurement plan, including SCE's bid solicitation materials, in D.08-02-008.[32] As ordered by D.08-02-008, on February 29, 2008 SCE filed and served its amended 2008 Plan. The proposed PPA is consistent with SCE's Commission-approved 2008 RPS Plan.

PPA fits with SCE's identified renewable resource needs

SCE'S 2008 RPS Plan states that SCE seeks to procure renewable resources to augment those under contract from prior solicitations and to ensure that SCE meets the overall goal of 20% renewables as soon as possible, and with a reasonable margin of safety.[33] Accordingly, SCE states that it needs both near-term and long-term renewable energy but its evaluation criteria will favor proposals for near-term deliveries. SCE's stated preference is to receive the RPS energy in SP-15, but SCE will consider proposals based upon any designated delivery point within California. SCE will seek resources both from generation facilities located in California and outside the state (but within the WECC), if the Seller complies with the requirements for "out-of-state facilities" in the California Energy Commission (CEC) Guidebook for RPS Eligibility.[34]

The PacifiCorp project meets SCE's resource needs because the facilities are operating, and thus, the energy is immediately available to deliver renewable energy and satisfy SCE's near-term RPS energy need. Also, the facilities are located in the WECC and the project has obtained CEC approval of its delivery structure (See Appendix B).

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[31] PU Code §399.14(d)
[32] http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/78817.pdf
[33] SCE reports that it intends to procure renewables based on its High Need Case scenario. SCE's its Base Case assumes a 100% on-time delivery of all currently executed contracts, and its High Need Case assumes 70% delivery from executed, but not yet delivering, contracts.
[34] http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF

PacifiCorp contract compares favorably to 2008 RPS bids

Although the PacifiCorp contract was negotiated bilaterally, SCE conducted a least-cost best-fit (LCBF) bid evaluation of the project to compare it to SCE's 2008 solicitation bids and to determine whether the project would have been shortlisted.

SCE found that the PacifiCorp contract is attractive relative to proposals received in response to SCE's 2008 solicitation. Because the wind facilities are already operating, there are no viability concerns with the project. Also, PacifiCorp is an experienced developer that, SCE says, will be able to perform on its obligations under the contract.

PPA is consistent with RPS bilateral contracting guidelines

The PacifiCorp contract is consistent with the bilateral contracting guidelines in D.06-10-019:

1. The PPA will not be applied to SCE's cost limitation.[35]
2. Pursuant to D.06-10-019, the PPA was submitted by advice letter.[36]
3. The PPA is at least one month in duration.[37]
4. The PPA is reasonably priced.[38]

Also, in D.09-06-050, this Commission determined that bilateral contracts should be reviewed according to the same processes and standards as contracts that come through a solicitation. Accordingly, the PacifiCorp contract was compared to SCE's other RPS opportunities received in its 2008 renewable RFP. (See Sections "PacifiCorp contract compares favorably to 2008 RPS bids" and "Contract price is reasonable".) Energy Division staff did not, however, require

[35] The PPA is ineligible for the cost limitation because it did not result from a competitive solicitation and is a short-term contract. (PU Code §399.15[d][2])
[36] "For now, utilities' bilateral RPS contracts, of any length, must be submitted for approval by advice letter." (D.06-10-019, p.31)
[37] "All RPS-obligated LSEs are also free to enter into bilateral contracts of any length with RPS-eligible generators, as long as the contracts are at least one month in duration, to enable the CEC to verify RPS procurement claims." (D.06-10-019 p. 29)
[38] The contract price of bilaterals must be deemed reasonable by the Commission. (D.06-10-019, p. 31)

an Independent Evaluator report for the contract because PacifiCorp contract was executed before the Commission adopted D.09-06-050.

PPA is consistent with adopted standard terms and conditions

The terms and conditions in the PacifiCorp contract[39] comply with the non-modifiable terms required in RPS contracts as set forth in D.08-04-009, and amended by D.08-08-028.

Contract is not subject to the EPS

The EPS does not apply to a contract of less than five years. Because the PacifiCorp contract term is less than five years, the EPS is not triggered.

Project is viable

SCE asserts that there are no viability concerns with the PacifiCorp project because the facilities are already operating.

Contract price is reasonable

Pursuant to D.09-06-050, Energy Division staff must establish a price benchmark to evaluate the reasonableness of very-short term contracts. However, this benchmark has not yet been adopted; D.09-06-050 provides that short-term contracts can be reviewed on a case-by-case basis in the interim.

The Commission has considered the PacifiCorp contract's price relative to SCE's 2008 solicitation bids and SCE's other available RPS procurement options. While there were no very short-term contracts shortlisted in SCE's solicitation, SCE provided the Commission with a confidential analysis of how the contract price compares to its other 2008 offers.

SCE's analysis demonstrates that the PacifiCorp contract price is reasonable as compared to its 2008 shortlist. Further, the project provides value because of its high viability, commitment to delivering firm power and ability to satisfy SCE's need for near-term RPS deliveries.

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[39] The contract includes the Edison Electric Institute's (EEI) Master Agreement and Collateral Annex, Cover Sheet, Paragraph 10, and the Confirmation Letter.

Proposed delivery structure complies with CEC's guidelines

The CEC is responsible for determining whether out-of-state RPS projects satisfy the delivery requirements for the RPS program. Pursuant to the CEC's RPS Eligibility Guidebook, these requirements are automatically satisfied for projects that are located in California or that are located on the border of the state and have their first point of interconnection to the WECC transmission system within California. If, however, a facility is connected to the WECC not within California, the energy from the facility must be scheduled for consumption by California end-use retail customers. The guidelines for eligible delivery structures can be found in Section III(D) of the CEC's RPS Eligibility Guidebook. For each out-of-state project that the CPUC reviews, the CEC provides the CPUC with written documentation addressing whether the proposal satisfies the delivery requirements.

On August 4, 2009, the CEC provided the CPUC with a letter declaring that the proposed PacifiCorp delivery structure satisfies the RPS delivery requirements. This letter, which also includes a brief overview of PacifiCorp's delivery structure, can be found in Appendix B.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived or reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

No comments were received.

FINDINGS

1. The RPS Program requires each utility, including SCE, to increase the amount of renewable energy in its portfolio to 20 percent by 2010, increasing by a minimum of one percent per year.
2. D.08-04-009, as modified by D.08-08-028, sets forth four non-modifiable and nine modifiable standard terms and conditions to be incorporated into RPS power purchase agreements.
3. D.03-06-071 allows for a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process.
4. D.08-02-008 directed the utilities to issue their 2008 renewable RFOs, consistent with their renewable procurement plans.
5. The Commission required each utility to establish a Procurement Review Group (PRG) to review the utilities' interim procurement needs and strategy, proposed procurement process, and selected contracts.
6. SCE filed Advice Letter (AL) 2357-E on July 1, 2009, requesting Commission review and approval of a bilateral renewable energy contract with PacifiCorp.
7. SCE filed AL 2357-E-A on September 30, 2009 to correct errors in a few calculations in the confidential Appendices of AL 2357-E. The changes do not change the Commission's determination that the contract is reasonable.
8. The Commission has reviewed the proposed PacifiCorp contract and finds it to be consistent with SCE's approved 2008 renewable procurement plan and bilateral procurement rules.
9. The proposed contract price is reasonable.
10. The CEC provided the Commission with written confirmation that the proposed delivery structure for the PacifiCorp contract complies with the RPS Eligibility Guidebook.
11. Any electric energy sold or dedicated to SCE pursuant to the PacifiCorp contract, constitutes procurement by SCE from an ERR for the purpose of determining SCE's compliance with any obligation that it may have to procure from ERRs pursuant to the RPS Legislation or other applicable law concerning the procurement of electric energy from renewable energy resources.

12. All procurement under the PacifiCorp contract, counts, in full and without condition, towards any annual procurement target established by the RPS statute or the Commission which is applicable to SCE.
13. All procurement under the PacifiCorp contract counts, in full and without condition, towards any incremental procurement target established by the RPS statute or the Commission which is applicable to SCE.
14. All procurement under the PacifiCorp contract counts, in full and without condition, towards the requirement in the RPS Legislation that SCE procure 20 percent (or such other percentage as may be established by law) of its retail sales from ERRs by 2010 (or such other date as may be established by law).
15. The PacifiCorp contract is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the PacifiCorp contract subject only to further review with respect to the reasonableness of SCE's administration of the PacifiCorp contract.
16. Any indirect costs of renewables procurement identified in Section 399.15(a)(2) shall be recovered in rates.
17. The PacifiCorp contract proposed in AL 2357-E and AL 2357-E-A should be approved without modification.
18. Certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure, should not be disclosed. Accordingly, the confidential appendices, marked "**[REDACTED]**" in the redacted copy, should not be made public upon Commission approval of this resolution.

THEREFORE IT IS ORDERED THAT:

1. The proposed renewable energy contract between Southern California Edison and PacifiCorp in Advice Letters 2357-E and 2357-E-A is approved without modification.
2. The costs of the contract between Southern California Edison and PacifiCorp are reasonable and in the public interest; accordingly, the payments to be made by Southern California Edison are fully recoverable in rates over the life of the project, subject to Commission review of Southern California Edison's administration of the contract.

3. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on October 15, 2009; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON
PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

Confidential Appendix A

Contract price analysis and terms and conditions

[REDACTED]

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March 2, 2010

Via Email and Federal Express

Carole J. Washburn
Secretary
Washington Utilities and Transportation Commission
PO Box 47250
1300 S Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: In the Matter of the Petition of Puget Sound Energy for an Accounting Order.
Docket No. UE-070725

Dear Ms. Washburn:

Enclosed please find an original and seven (7) copies each of the following cross examination exhibits on behalf of the Industrial Customers of Northwest Utilities in the above referenced docket. ICNU is also providing two sets of its proposed cross examination exhibits for each witness to the party sponsoring the witness (one for counsel, one for the witness), and one set of its proposed cross examination exhibits to each party not sponsoring the witness. ICNU is awaiting data responses from Puget Sound Energy during the remainder of the current week, and reserves the right to file additional cross examination exhibits based on those responses.

Thank you for your assistance.

Sincerely yours,

/s/ Brendan E. Levenick
Brendan E. Levenick

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents upon all parties of record in this proceeding by mailing a copy thereof in a sealed, first-class postage prepaid envelope or FedEx to each individual's last-known address, as listed below.

DATED this 2nd day of March, 2010.

Davison Van Cleve, P.C.

/s/ Brendan E. Levenick
Brendan E. Levenick

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CASE: UE 210
WITNESS: Michael Dougherty

PUBLIC UTILITY COMMISSION OF OREGON

STAFF EXHIBIT 300

Opening Testimony

July 24, 2009

Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS ADDRESS.

A. My name is Michael Dougherty. I am the Program Manager for the Corporate Analysis and Water Regulation Section of the Public Utility Commission of Oregon. My business address is 550 Capitol Street NE Suite 215, Salem, Oregon 97301-2551.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK EXPERIENCE.

A. My Witness Qualification Statement is found in Exhibit Staff/301.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of this testimony is to describe my adjustments to PacifiCorp's Distribution Operations and Maintenance (O&M) expenses and recommendations concerning the sale of Renewable Energy Certificates (RECs).

Q. DID YOU PREPARE EXHIBITS FOR THIS DOCKET?

A. Yes. I prepared:

Exhibit Staff/302, consisting of 1 page; and

Exhibit Staff/303, consisting of 37 pages.

Q. PLEASE PROVIDE A SUMMARY OF YOUR ADJUSTMENTS.

A. The following table summarizes my adjustments to PacifiCorp's Distribution O&M expenses.

Table 1 – Summary of Distribution O&M Adjustments

CWIP Write-offs	$1,022,630
Meals and Entertainment	$87,432
Total	**$1,110,063**
Total Escalated to 2010	**$1,136,704**
Total increased for $26,099	**$1,162,803**

Using PacifiCorp's O&M "Operation" escalation rate of 2.4 percent,[1] the adjustment escalates to a 2010 amount of $1,136,704. I then took this amount and subtracted PacifiCorp's 4.20 Adjustment, *Adjust Non-Power Cost O&M to 2010 Target*, Distribution, Other Adjustments, Oregon-allocated amount of minus $26,099 to receive a total adjustment of $1,162,803.

Q. PLEASE EXPLAIN YOUR USE OF THE ESCALATION FACTOR.

A. In Exhibit PPL/702, page 4.8, PacifiCorp calculates the O&M escalation from June 2008 through December 2010 for accounts 500 to 935 (non-power cost accounts only) using industry specific escalation indices. In Exhibit PPL/703, page 4.8.8, PacifiCorp actually provides two Distribution escalation rates, 2.4 percent for Operations and a negative 1.3 percent for Maintenance. Since CWIP write-offs and meals and entertainment are more akin to operations than maintenance,[2] I used the operations escalation of 2.4 percent.

Q. PLEASE EXPLAIN YOUR ADJUSTMENT CONCERNING PACIFICORP'S 4.20 ADJUSTMENT, ADJUST NON-POWER COST O&M TO 2010 TARGET.

[1] Exhibit PPL/703, page 4.8.8.
[2] CFR 18, Pt. 101 states on page 379 under 2. Maintenance "The cost of maintenance chargeable to various operating expense and clearing accounts include labor, materials, overheads, and other expenses incurred in maintenance work." The section lists items that are classified as maintenance.

A. In adjustment 4.20, PacifiCorp explains that the Company is not planning to spend more than the budgeted non-power cost O&M in calendar year 2010. As a result, the Company removes "Inflation and Labor Escalations" and "Other Adjustments" costs from different categories of expenses. For Distribution, the Company actually adds back $91,901 in "Other Adjustments" ($26,099 Oregon-allocated). In order to account for PacifiCorp's expense adjustment, I subtracted this amount from my escalated adjustment. Because PacifiCorp's adjustment was a negative $26,099 (Oregon-allocated), my adjustment actually increases due to subtracting a negative amount.

Q. HOW IS YOUR TESTIMONY ORGANIZED?

A. My testimony is organized as follows:

ISSUE 1, CONSTRUCTION WORK IN PROGRESS (CWIP) WRITE-OFF EXPENSES

Q. PLEASE EXPLAIN THESE CONSTRUCTION WORK IN PROGRESS (CWIP) WRITE-OFF EXPENSES.

A. According to PacifiCorp's response to Staff Data Request No. 211,[3] the charges are cancelled CWIP projects and reserve adjustments to expenses. PacifiCorp states (emphasis added):

[3] Included in Exhibit Staff/303.

> The specific capital projects being written off are included in CWIP until such time as ***information is available that construction will not be completed and an asset not be placed in service.*** At that time, the costs are written off by crediting CWIP and debiting expense.

In its response to Staff Data Request No. 296,[4] PacifiCorp provided an extensive list of projects that were cancelled during the test year. Although PacifiCorp does not record the reasons why the capital jobs were cancelled in its accounting data, I was able to classify the Oregon-labeled entries into four main categories: Oregon New Revenue, Oregon Mandated, Public Accommodations, and Other (Replace, Upgrades, Temporary Connects). The following table summarizes the entries (also included in Staff Exhibit 303, Dougherty 6 - 9).

Table 2 – CWIP Write-offs

Category	Amount
Oregon – New Revenue	$704,795
Oregon – Mandated	$45,693
Oregon - Public Accommodations	$120,238
Other (Replace, Upgrade, Temp Connects)	$38,321
Total	**$909,047**

In its response to Staff Data Request No. 296, PacifiCorp notes that there are sometimes timing difference between the month cancelled and the month processed; however, the timing differences are relatively short. Additionally, the above total number only references Oregon-labeled entries. The difference between my Table 1 amount ($1,022,630) and the Table 2 amount ($909,047) results from both the timing difference and the system-labeled amounts.

[4] Included in Exhibit Staff/303.

Q. WHY SHOULD THESE EXPENSES NOT BE INCLUDED IN PACIFICORP'S REVENUE REQUIREMENTS?

A. Although these CWIP projects were written off as expenses, they started as construction projects that were to be placed in plant. PacifiCorp affirms this in its response to Staff Data Request No. 211[5] by stating "*construction will not be completed and an asset not be placed in service.*" Because the projects were not placed in service, the projects were not used for providing utility service to Oregon customers. As a result, PacifiCorp should not be allowed to recover these expenses through customer rates.

Q. IF NOT IN CUSTOMERS RATES, HOW WILL PACIFICORP RECOVER THESE EXPENSES?

A. As the above table indicates, approximately 78 percent of the Distribution CWIP write-offs expenses were related to projects labeled "New Revenue". PacifiCorp's Rule 13 discusses Line Extensions and charges and allowances concerning line extensions. In addition, PacifiCorp's Schedule 300, lists PacifiCorp's Facilities Charges, Temporary Service Charge, and Contract Administration Credit.[6] As such, one way PacifiCorp could recover these expenses is to attempt to bill and recover the write-off amounts from the specific sources of new revenue. These costs should not be spread to all Oregon customers.

Concerning the projects listed as Mandated, Public Accommodations, and Other (Replace, Upgrade, Temporary Connections), PacifiCorp should not be

[5] Included in Exhibit Staff/303.
[6] Rule 13 and Schedule 300 are included in Staff/303.

allowed to recover these costs since these construction projects were never placed into service. Ballot Measure 9 (ORS 757.355 (1)) precludes recovery of investments that are used and useful in providing service to customers.

Q. DO YOU HAVE AN ALTERNATE RECOMMENDATION FOR THE COMMISSION TO CONSIDER?

A. Yes. As shown in Table 2, projects listed as Oregon – New Revenue total $704,795. If the projects were successfully completed, the revenues would have been spread to all customers. As such, an alternate recommendation would be to equally share these Oregon – New Revenue CWIP costs between customers and shareholders. A 50 / 50 sharing between shareholders and customers for these projects would result in customers assuming $352,398 of these costs. As a result, my total recommended Distribution O&M adjustments would be reduced to $810,405.

Because Ballot Measure 9 (ORS 757.355 (1)) precludes recovery of investments that are used and useful in providing service to customers, I do not propose a sharing of the other CWIP cost categories.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY ON CWIP WRITE-OFF ADJUSTMENTS?

A. Yes.

ISSUE 2, MEALS AND ENTERTAINMENT EXPENSES

Q. PLEASE EXPLAIN YOUR MEALS AND ENTERTAINMENT EXPENSE ADJUSTMENTS.

A. Staff routinely recommends a 50 / 50 sharing between shareholders and customers concerning meals and entertainment expenses. The following table summarizes the meals and entertainment expenses in PacifiCorp's Distribution O&M accounts. These amounts are also listed in Staff/300, Dougherty/1.

Table 3 – Meals and Entertainment Expenses

Category	Amount
Catering	$4,357
Meals & Entertainment	$50,716
Off-site Rentals (Employee Appreciation)	$7
On-site Meals	$17,806
Other Employee Expenses (Emp. Appreciation)	$14,547
Total	**$87,432**

In Commission Order No. 09 – 020 (UE 197), the Commission agreed with Staff's recommendation concerning meals and entertainment expenses and ordered the 50 percent sharing between customers and shareholders. The Commission stated on page 21:[7]

> We agree with Staff that the costs for food and gifts are discretionary and should be shared equally by ratepayers and shareholders.

As a result, I recommend a 50 / 50 sharing of meals and entertainment expenses between customers and shareholders.

[7] Included in Exhibit Staff/303.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY CONCERNING O&M EXPENSES?

A. Yes.

ISSUE 3, RENEWABLE ENERGY CERTIFICATIONS (RECS)

Q. PLEASE EXPLAIN HOW PACIFICORP PLANS TO HANDLE REVENUE RECEIVED FROM THE SALE OF RENEWABLE ENERGY CERTIFICATES?

A. In order to meet Oregon's Renewable Portfolio Standard (RPS), PacifiCorp is currently banking Oregon's share of RECs. In adjustment 3.5, PacifiCorp allocates projected REC sales for the twelve months ending December 2010 from Oregon to the Company's remaining jurisdictions consistent with the Multi-state Process (MSP) Revised Protocol. According to PacifiCorp's response to Staff Data Request No. 230,[8] the adjustment is necessary to avoid giving states with RPS requirements (Oregon and California) credit for REC sales for their portion of RECs that are being banked rather than sold. PacifiCorp has been banking Oregon RECs to meet the RPS requirement. In its response to Staff Data Request No. 232,[9] the Company estimates that based on current owned or contracted renewable resources, PacifiCorp estimates that it may have sufficient RECs allocated to Oregon to meet RPS requirements for years 2011 through 2016.

[8] Included in Exhibit Staff/303.
[9] Included in Exhibit Staff/303.

Q. HOW DID PACIFICORP TREAT THE SALES OF RECS IN ITS PREVIOUS GENERAL RATE CASE, DOCKET UE 179?

A. The REC revenue generated included in PacifiCorp's General Rate Case, Docket UE 170 was $444,001.[10] This revenue was recorded in Account 456, *Other electric revenue*. Because rates from UE 170 were effective January 1, 2007, customers received benefits of REC sales for the years 2007, 2008, and 2009.

Q. DO YOU AGREE WITH PACIFICORP'S ADJUSTMENT?

A. Yes. However, because PacifiCorp estimates that it will have sufficient RECs allocated to Oregon to meet RPS requirements for years 2011 through 2016, if the Company is able to and chooses to sell Oregon-allocated RECs, the Company should place the gain on the sale to the property sales balancing account for refund to customers with interest accrual from the date of sale using the Commission approved rate of return until amortization begins. This proposed treatment is consistent with Commission Order No. 07-083 (UP 236),[11] which established the sale of RECs as a property sale with gains on sale being placed in a property sales balancing account for return to customers. Additionally, PacifiCorp should report in its semi-annual Property Sales Balancing Account report any REC sales that occurred during the reporting period.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.

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[10] Response to Staff Data Request No. 99. Included in Exhibit Staff/303.
[11] Included in Exhibit Staff/303.

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

BRIEF OF

THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

REDACTED VERSION

March 17, 2010

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I. INTRODUCTION

1 The Industrial Customers of Northwest Utilities ("ICNU") submits this Brief in Washington Utilities and Transportation Commission ("WUTC" or the "Commission") Docket No. UE-070725, requesting that the Commission reject Puget Sound Energy's ("PSE" or the "Company") proposed allocation of net revenue resulting from the sale of renewable energy credits ("RECs") and other carbon financial instruments ("CFIs")("REC Revenues"). Instead, the Commission should order the Company to use the REC Revenues to establish a rate credit applicable to all customers who purchase electricity from the Company.

2 PSE has been selling RECs to various entities since [redacted],[1] and CFIs since [redacted].[2] While future RECs may be used to comply with the Washington Renewable Portfolio Standard ("RPS"), PSE cannot bank its past and presently acquired RECs or CFIs for later compliance, when the RPS becomes effective in 2012.[3] Consequently, the Company is selling RECs and CFIs to entities that need them.

3 The total net revenue from PSE's REC and CFI sales is expected to be about [redacted] through August 2015.[4] In 2007, PSE petitioned the Commission for authority to defer REC and CFI sale proceeds,[5] and the Company later filed an amended petition proposing to allocate REC Revenues: 1) to its shareholders through

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1/ Schoenbeck, Exh. No. DWS-3HC.
2/ Schoenbeck, Exh. No. DWS-4C.
3/ RCW § 19.285.
4/ Schoenbeck, Exh. No. DWS-1HCT at 2:3-4.
5/ Re Petition of PSE, Docket No. UE-070725, Petition for an Order (Apr. 13, 2007).

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retirement of a receivable related to power sales dating back to 2000 and 2001 ("California Receivable"); 2) to fund low income programs; and 3) to reduce regulatory assets.[6] The California Receivable is unrelated to the generating resources producing RECs and CFIs.

4 ICNU has submitted testimony explaining the flaws in PSE's proposed allocation of the REC Revenues. All of the REC Revenues should flow back to customers because there is no demonstrable connection between REC and CFI sale proceeds and the Company's California Receivable. PSE assumed its obligations under the California Receivable when the Company was responsible for all costs and benefits associated with net power costs, and PSE has no legitimate claim to siphon ratepayer money to pay for shareholder costs.

5 [redacted] is contradicted by both the publicly available and confidential evidence in this proceeding. PSE presents scant evidence to support its claim, which is almost entirely made up of the written and oral testimony of its witness and is not supported by any contemporaneous documentation. The evidence demonstrates that the REC Revenues are the result of normal market transactions between PSE and various utilities that have urgent needs to meet their imminent obligations under state mandated RPSs. In addition, PSE's position is also directly contradicted by the California investor owned utilities' statements that the transactions should be

[6] De Boer, Exh. No. TAD-1T at 4:9 – 5:4.

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evaluated as independent market transactions for the purchase of renewable energy, irrespective of the Settlement Agreement and with prices fully consistent with comparable transactions.[7]

6 Likewise, although ICNU routinely supports or does not oppose low income assistance programs, this proceeding is not the proper forum to earmark revenues for low income assistance. Such allocations need to be considered in light of all relevant factors in a general rate case.

7 Finally, the REC Revenues should be used to pay a rate credit, rather than reduce regulatory assets as proposed by PSE and Staff. There is no reason current ratepayers should not receive the full value of the REC Revenues as quickly as possible, especially in light of the current poor economic conditions and the possibility that PSE's overall rates may increase as a result of the Company's currently filed general rate case.

8 Commission Staff also takes the position that the Company's proposed allocation to shareholders and low-income programs should be rejected.[8] Additionally, Public Counsel and The Kroger Co. have submitted testimony opposing aspects of PSE's proposed revenue allocation.[9] Conversely, the NW Energy Coalition, Renewable Northwest Project, and The Energy Project (collectively, the "Joint Parties") at least

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7 Schoenbeck, Exh. No. DWS-8 (emphasis added).
8 Parvinen, Exh. No. MPP-1THC at 10:21-22.
9 Norwood, Exh. No. SN-1HCT; Higgins, Exh. No. KCH-1T.

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partially support PSE and have submitted joint testimony in conjunction with PSE to allocate revenue to low-income programs.[10/]

II. ARGUMENT

A. Sound Ratemaking Theory Requires that Ratepayers Receive the Full Benefit of the REC Revenues

The REC Revenues should be returned to the customers that paid for the costs of the renewable resources that generated the RECs. This result is supported by Commission precedent, Washington Supreme Court holdings, and established ratemaking principles. Utilities like PSE must offset investment costs with revenues generated by rate base investments, and utilities are only allowed the opportunity to recover their investment costs plus an authorized rate of return. Further incentives and double investment recovery should not be permitted. In other jurisdictions, REC revenue is fully applied to benefit ratepayers, and there is no reason why the WUTC should depart from sound ratemaking theory in this proceeding.

1. The Fundamental Principle in Washington: Revenues Offset Costs

9 Proper adjustment to offset revenues against costs is not an academic or discretionary issue. Utility proposals which prevent immediate revenue offset are "not consistent with sound ratemaking theory."[11/] Hence, this case ultimately concerns a *foundational* question of ratemaking theory. PSE is asking the Commission to approve an unsound request that would prevent simple and straightforward

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10/ Englert, et al., Exh. Nos. JOINT-1T and JOINT-2T.

11/ WUTC v. Rainier View Water Company, Inc., Docket No. UW-010877, Sixth Suppl. Order at ¶ 44 (July 12, 2002).

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application of revenue to offset cost. ICNU urges the Commission to reject this invitation, as the WUTC has faithfully done in similar rate matters.

10 The controlling principle in allocating REC and CFI proceeds is that power revenues must be applied to offset power costs. Standard ratemaking theory requires that if base load investment "is included in rate base, then revenues that would be generated *by that investment* should also be taken into account."[12/] Moreover, as the Commission explains, "we have previously identified the following considerations for the recovery of *deferred power costs* in rates," including the requirement that a "company *must* . . . offset increased costs with increased revenues . . . ."[13/] The fundamental offset principle should be applied in this deferral case because it necessarily implicates consideration of both cost and revenue.

11 Rates cannot be fair, just and reasonable unless the proper relationship between costs and revenues is established. Adjustments affecting rates are "to best estimate the relationship between the Company's costs and revenues and *thus* establish rates that are fair, just, and reasonable and allow the Company the opportunity to earn a fair rate of return."[14/] The inseparable correlation between cost/revenue balance and rate fairness is plain—cost/revenue offsets "thus" establish fair rates. In other words, rate adjustments must *first* be made to balance the relationship between costs and

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12/ 1 Leonard S. Goodman, *The Process of Ratemaking* 270 (1998) (emphasis added).

13/ WUTC v. PacifiCorp, Docket No. UE-050684, Final Order at ¶ 309 (Apr. 17, 2006) (*citing* Re Petition of PacifiCorp, Docket UE-020417, Sixth Suppl. Order at ¶¶ 25-33 (July 15, 2003)) (emphasis added).

14/ WUTC v. Rainier View Water Company, Inc., Docket No. UW-010877, Sixth Suppl. Order at ¶ 29 (emphasis added).

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revenues *before* rate establishment can be considered fair, just and reasonable. Just rates are a direct consequence of cost/revenue balance.

12 This foundational principle applies to gas and electric utilities.[15/] The Commission recently explained that the rule "means that once an event is determined to be known and measurable, it can then be used to best estimate the relationship between revenues and costs."[16/] The application of that rule to this case is straightforward—REC and CFI sale transactions provide known and measurable indices of sale proceeds. Moreover, the Commission uses "revenues" and "offsetting factors" as synonymous terms in relationship to costs.[17/]

13 In sum, REC and CFI revenue should presently be applied to offset costs of the renewable resources responsible for the proceeds. The costs of renewable generating resources which produce RECs and CFIs should be allocated across customer classes according to PSE's cost-of-service study.[18/]

2. PSE Is Not Entitled to Double Recovery

14 The matter of authorized utility return on investment is also governed by established precedent. The Supreme Court of Washington applies the standard equation of R = O + B(r).[19/] The Court explains that R is the utility's allowed revenue requirement and "the B term is the 'rate base' which represents *the total investment in*, or fair value of, the facilities of the utility employed in providing its service. Calculation of the rate

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15/ WUTC v. Avista, Docket Nos. UE-090134, et al., Final Order at ¶ 74 (Dec. 22, 2009).
16/ Id.
17/ Compare id. at ¶ 74, with id. at ¶ 47.
18/ Schoenbeck, Exh. No. DWS-1HCT at 11:13 – 12:1.
19/ POWER v. WUTC, 104 Wn.2d 798, 809 (1985).

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base is of obvious importance since the product of the rate base (B) *multiplied by* the allowed rate of return (r) accrues to the utility's investors."[20] In short, utility investors are legally entitled to an opportunity to recover their "total investment" plus a return on that investment.

15 PSE's proposed allocation of REC and CFI proceeds goes still farther in impermissibly earmarking a double recovery to the Company. While PSE shareholders already accrue back their total investment plus earn a rate of return on renewable generating resources, the Company proposes to grant shareholders another $21 million in shareholder profit.[21] These amounts are net revenues not tied to any costs. Such double recovery is strictly forbidden. As the Supreme Court states, "the *r* term is the rate of return that the utility is *allowed to earn* on its investment."[22] The proposed allotment of REC and CFI revenue is impermissible, since the Company's proposed allocation to shareholders exceeds, and is in addition to, the "allowed" rate of return.

3. PSE Does Not Need to Be Incented to Fulfill its Pre-Existing Legal Obligations

16 PSE's contention that the Company must be incented or "rewarded" to broker good REC sales is unpersuasive.[23] As an initial matter, utilities such as PSE are granted a monopoly in exchange for extensive regulation, to ensure that the public interest is

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20/ Id. at 809-10 (emphasis added).
21/ De Boer, Exh. No. TAD-1T at 4:20 – 5:2.
22/ POWER, 104 Wn.2d at 810 (second emphasis added).
23/ De Boer, Confidential TR. 188: 16 – 189: 8

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protected.[24] In other words, PSE is positively required to protect ratepayer interests—e.g., the Company is already obligated to make all of its sales (including REC sales) at prices favorable to the public interest.[25] The Company is not entitled to, or in need of, further "incentives" beyond its allowed rate of return on top of rate base investment recovery. To argue otherwise is contrary to fundamental ratemaking principles, and would encourage utilities to request incentives on a wide variety of other transactions, including wholesale power sales, and equipment and land sales.

17 Moreover, practically speaking, when the Commission adopts incentive mechanisms, the institution of such mechanisms normally occurs *before* the utility action being incented, not as an extra prize awarded after the fact.[26] Establishment of incentive mechanisms should be the fruit of a public and deliberative process instituted before any "incentives" are doled out. Allocating REC proceeds to PSE shareholders—as a post hoc encouragement for PSE to fulfill its pre-existing legal duty—would send the wrong message.

4. REC Proceeds in Other States Are Treated as Offsetting Revenues Benefitting Customers

18 When the question of REC revenue allocation has arisen before other utility regulatory commissions, customers have been awarded the full benefit of all such proceeds. As established by uncontroverted testimony in this case,[27] PacifiCorp

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24/ Jewell v. WUTC, 90 Wn.2d 775, 776 (1978).
25/ E.g., Re Application of Avista, Docket No. UE-991255, Final Order at ¶ 96 (Mar. 6, 2000)
26/ Parvinen, TR. 203:25 – 204:4.
27/ Englert, et al., TR. 60:14-22.

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ratepayers in Utah and Wyoming receive 100% of the benefit of REC sales.[28/] Likewise, Portland General Electric Company directly returns all REC revenue back to Oregon customers through a property sales account.[29/]

19 In similar fashion, the Kansas Corporation Commission approved a settlement in which "the revenue received, if any, from the sale of Renewable Energy Credits (RECs) shall be credited *as an offset* to the" Energy Cost Adjustment Tariff used in Kansas.[30/] The Connecticut Department of Public Utility Control "believes that the best option, to ensure that ratepayers receive the benefits of the RECs," is to transfer 100% of the RECs in a fashion that benefits ratepayers."[31/] Neither PSE nor the Joint Parties have identified any investor owned utility, which has not either banked its RECs or used the actual or forecasted benefits of REC sales to lower rates. Across the county, utility regulatory agencies consistently apply REC proceeds to maximize customer benefit through cost/revenue offsets.

B. All REC Sales Prices Are Within Broad Market Ranges and Are Not Related to the California Receivable Settlement

20 The record amply demonstrates that all the REC Revenues currently at issue are the result of normal market transactions. This is proven by empirical market pricing and bids, and through publicly available information establishing the independent relationship of REC sales and the California Receivable settlement litigation. There

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28/ Higgins, Exh. No. KCH-1T at 6:8-11.

29/ Englert, et al., Exh. No. J-16 at 8-9.

30/ Re Application of Mid-Kansas Electric Company, Docket No. 09-MKEE-969-RTS, Order Approving Unanimous Stipulation and Agreement, Stipulation and Agreement at 6 (Kansas Corp. Comm'n Jan. 11, 2010) (emphasis added).

31/ DPUC Review of Long-Term Renewable Contracts – Round 3 Results, Docket No. 08-03-03 at 17 (Connecticut Dept. of Pub. Util. Control Apr. 8, 2009).

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is no reliable evidence that demonstrates that [redacted]. Consequently, there is no equitable justification for awarding Company shareholders a portion of REC Revenues.

1. The Facts Do Not Support the [redacted]

21 PSE contends that its shareholders are entitled to a portion of the REC Revenues based on the claim that, *but for* the Company's ability to negotiate a settlement of the California Receivable litigation, REC sales and prices would never have occurred at all.[32/] Likewise, PSE claims that [redacted].[33/] PSE cannot prove such claims, nor are the risk factors associated with the California Receivable related to the generating assets responsible for REC sales.

22 The only real "evidence" that the Company submits to show the purported value of [redacted] is Mr. De Boer's testimony. When asked by ICNU to supply documentary proof supporting its settlement leveraging claims, PSE admitted that there were no contemporaneous documents that supported its claim.[34/] Ironically, the best documentary evidence that PSE has been able to muster—[redacted][35/]—fully justifies a

32/ De Boer, Exh. No. TAD-1T at 7:19 – 8:3.
33/ De Boer, Exh. No. TAD-3HCT at 7:9-11; accord De Boer, Confidential TR. 122:10-13.
34/ De Boer, Exh. No. TAD-13; accord De Boer, Confidential TR. 128:9-13.
35/ De Boer, Exh. No. TAD-3HCT at 8:1 – 10:19.

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rejection of its proposed revenue allocation to shareholders. The [redacted].

2. Empirical Evidence Demonstrates [redacted]

23 Empirical evidence demonstrates that [redacted]. Mr. De Boer acknowledges that "[redacted]."[36] Mr. De Boer also draws a sharp distinction between: [redacted]"[37], [redacted] the REC prices ranged between [redacted] and [redacted].[38] In other words, the sample variance in market pricing ranged at least as much as [redacted], or [redacted].

24 This demonstrably wide range of sample market pricing variance shows that the [redacted], allegedly [redacted], are comfortably within normal market ranges. The difference between the highest price [redacted],

36/ Id. at 18:14.
37/ Id. at 8:4-5.
38/ Id. at 8:5-8.

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[redacted] and the highest REC price that PSE [redacted], [redacted], is only [redacted]—i.e., *less than* the [redacted] range which exists among prices that [redacted].

25 On cross examination, Mr. De Boer identified purported "evidence" on the market price for RECs, listing prices within the [redacted] range.[39/] However, Mr. De Boer's cross statements are contradicted by PSE's previously filed Rebuttal Testimony identifying [redacted] at prices in the [redacted] range, which were wholly distinguished from alleged [redacted] [redacted][40/] In fact, Mr. De Boer later testified at the hearing, in response to a Commissioner question [redacted] [redacted][41/] Quite apparently, Mr. De Boer's statements are too contradictory and uncertain to establish what [redacted], and they even support [redacted] [redacted].

3. California RPS Requirements, Not PSE Settlement Tactics, Are Responsible for Favorable REC Sales Prices

26 Just how substantial a measure of time and chance was involved in REC values is apparent when considering the urgent REC needs of California utilities. As a cross-examination exhibit, ICNU submitted the March 2010 California RPS Compliance

39/ De Boer, Confidential TR. 125:24 – 126:13.
40/ De Boer, Exh. No. TAD-3HCT at 8:4-8 (emphasis added).
41/ De Boer, Confidential TR. 179:23 – 180:12 (emphasis added).

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Report of SCE, filed with the California Public Utilities Commission ("CPUC"). A full two-thirds of this report is devoted to explaining SCE's "Barriers to Future RPS Compliance."[42] Moreover, even Mr. De Boer freely admits that [redacted][43] Indeed, on cross examination, when responding to the Commissioner question [redacted][44] Mr. De Boer answered: [redacted][45] The exacting demands of the California RPS, with difficult to achieve and graduated 20% and 33% renewable energy goals,[46] is the real force behind the Company's successfully consummated REC sales at respectable market prices.

27 As a case in point, the Company's REC contract with PG&E is perfectly illustrative of how the California RPS requirement, and not PSE ingenuity, is ultimately responsible for REC pricing. On December 11, 2008, PSE claims it made a simple offer to [redacted][47] One week later, on December 18, 2008, SCE was

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42/ De Boer, Exh. No. TAD-26 at 4-9.
43/ De Boer, Confidential TR. 164:22-23 (emphasis added).
44/ Id. at 179:23-24.
45/ Id. at 180:3-4.
46/ De Boer, Exh. No. TAD-26 at 4.
47/ De Boer, Exh. No. TAD-12HC at 3-4; accord De Boer, Confidential TR. 124:20-25, 173:14-22, 177:17-20.

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selected by PSE as the highest bidder for 2,000 gigawatt hours ("GWh") of energy,[48] or 2 million RECs. SCE then filed for approval of the associated REC sale contract with the CPUC on February 9, 2009,[49] at the sales price of [redacted][50]

28 By February 2009, therefore, [redacted]. SCE had successfully bid for all 2 million RECs offered by PSE, [redacted].[51] Thus, at this point, even assuming that PSE ingenuity and settlement [redacted] *had* secured the sale of 2 million RECs to SCE at the price of [redacted], the Company could plainly not hope to exert further settlement [redacted] against PG&E.

29 In this light, the subsequent sale of 1 million RECs to PG&E, at a price *exceeding* the allegedly [redacted] rate of [redacted] to SCE, is completely inexplicable under PSE's [redacted] theory. Nevertheless, on [redacted] after SCE's REC advice filing with the CPUC, [redacted]

48/ Schoenbeck, Exh. No. DWS-7 at 2, 4.
49/ Id. at 2.
50/ Schoenbeck, Exh. No. DWS-1HCT at 5:1.
51/ De Boer, Exh. No. TAD-12HC at 4.

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[redacted][52] This [redacted] would be nothing short of madness, especially in consideration of the [redacted] price eventually agreed to between the parties,[53] if the primary factor at play was [redacted].

30 Conversely, if [redacted] can be ascribed to desperate California utility need, to meet the exacting and graduated California RPS goals, then this otherwise illogical [redacted] makes perfect sense. More importantly, the ultimate price of [redacted] also makes sense— [redacted], but as a reflection of the profitable market rate among REC-hungry California utilities. Accordingly, it then becomes unreasonable to view the [redacted] sale price to SCE as anything other than a market reflection as well. In sum, the REC prices at issue in this proceeding are fully explained by simple market forces, driven by the California RPS and shifting energy trends.

31 The Company alleges that [redacted][54] Mr. De Boer testified on cross examination that [redacted],[55] [redacted][56] When asked by a Commissioner whether [redacted]

52/ De Boer, Exh. No. TAD-6HC at 1.
53/ Schoenbeck, Exh. No. DWS-1HCT at 5:1.
54/ De Boer, Exh. No. TAD-3HCT at 12:1-3.
55/ De Boer, Confidential TR. 174:3-5.
56/ Id. at 174:9-10.

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[redacted][57] Mr. De Boer answered: [redacted][58]

32 But Mr. De Boer's portrayal of [redacted] contradicts PG&E's statements and Mr. De Boer's own testimony. PG&E expressly informed PSE [redacted][59] Mr. De Boer acknowledges [redacted][60] Hence, the only settlement condition between the parties was for PSE to [redacted]. That PG&E chose to accept the offer at [redacted] says far more about PG&E's urgent need for RECs than it does about Company leveraging strategy.

4. Publicly Available Information Refutes PSE's Entitlement Claims

33 PSE entitlement to REC proceeds hinges upon Company testimony which sharply contradicts publicly filed documents. The California utilities that bought RECs from PSE publicly attest that REC sales were comparable to market or *independent of* the California Receivable litigation settlement.[61] The CPUC has accepted such statements as true, after investigation of the matter.[62] Notwithstanding, in claiming an interdependence between the settlement and REC sales, the Company takes a

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57/ Id. at 174:24-25 (emphasis added).
58/ Id. at 175:1-2.
59/ De Boer, Exh. No. TAD-6HC at 1.
60/ De Boer, Exh. No. TAD-3HCT at 11:32 – 12:14.
61/ E.g., Schoenbeck, Exh. Nos. DWS-6, DWS-7, DWS-8, DWS-9, DWS-10, DWS-11.
62/ E.g., Schoenbeck, Exh. No. DWS-13.

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position entirely at odds with the findings of the CPUC and the statements of the California utilities—i.e., PSE founds its whole right to REC revenue on the claim that the REC sales prices were *dependent* on the Company's "ingenuity" in using California Receivable litigation to [redacted] sales at a higher price.[63] Unfortunately, this Commission has been placed into the unenviable but inescapable position of having to accept the statements of either the California utilities or PSE, with the even more unsettling implication that the CPUC looked the other way in accepting the potentially untrue statements of the California utilities.

34 SCE informed the CPUC: "The Puget Contract's pricing is *not* dependent on the Settlement Agreement and SCE would have chosen to enter into the Puget Contract *independent of* the Settlement Agreement."[64] Thus, SCE was doubly emphatic that the CPUC should not divine any interdependency between the California Receivable litigation and REC sales. SCE spelled this out again with perfect clarity: "The Puget Contract should be evaluated *on its own merits* as a market transaction for the purchase of renewable energy, *irrespective of* the Settlement Agreement."[65] PSE's present claim, that REC sales should not be evaluated on their own merits, just cannot be squared with SCE's statements.

35 The "Puget Contract" SCE refers to is labeled as SCE1 in ICNU testimony.[66] SCE1 comprises a huge portion of REC sales revenue: [redacted] out of a

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63/ De Boer, Exh. No. TAD-3HCT at 6:7-8.
64/ Schoenbeck, Exh. No. DWS-8 at 3 (emphasis added).
65/ Id. (emphasis added).
66/ Schoenbeck, Exh. No. DWS-1HCT at 7:24 – 8:1.

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[redacted] total,[67] at a price of [redacted].[68] In short, the amounts attributed to SCE1 alone are so proportionately significant that, if the Commission concurs with the CPUC in recognizing the *independence* of REC sales and the California Receivable settlement, then PSE's equitable claim to a shareholder allocation of REC revenue falls apart.

36 On June 18, 2009, the CPUC issued Resolution E-4244, expressly finding, after conducting its own investigation, that the SCE1 price was reasonable as compared to the shortlisted resources from its solicitation process. The CPUC specifically listed three attributes which demonstrate that the SCE1 "provides value."[69] Tellingly, no mention of the California Receivable litigation settlement was listed as a factor even considered by the CPUC. Essentially, the CPUC accepted the veracity of SCE's advice filing statements—that REC sales and litigation settlement discussions were completely independent of one another.

37 Moreover, there is no dispute in this case as to whether the CPUC was well informed about the California Receivable settlement. Mr. De Boer testifies that the CPUC approved the settlement;[70] that CPUC lawyers [redacted][71] and that the CPUC [redacted]

67/ Id. at 5:1.
68/ Id.
69/ Schoenbeck, Exh. No. DWS-13 at 17.
70/ De Boer, Exh. No. TAD-1T at 6:11-14.
71/ De Boer, Exh. No. TAD-3CT at 10:13-15.

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[72] As this Commission has recognized, SCE even provided the CPUC with [redacted] [73] Thus, the CPUC not only was fully apprised of any effect the Receivable settlement had on SCE's bid price, but the CPUC was privy to [redacted]. [74]

38 The CPUC's basis for finding the SCE1 price reasonable—comparative similarity to market bids—is the same characteristic attributed to other REC sale contracts in filings made by SCE and PG&E.[75] In each filing, the California utility sought approval of REC sales contracts by attesting that prices were comparable to prices for contracts entered into as a result of other utility solicitations.[76] As with SCE1, the CPUC then issued resolutions explicitly finding these contract prices reasonable *because* they were comparable to each respective utility's renewables solicitation.[77] Ultimately, in every instance in which the CPUC has issued a resolution concerning REC pricing at issue in this case, the CPUC found that the REC price was comparable to the market and not a high-price anomaly leavened by PSE's alleged leveraging strategy.

72/ De Boer, Confidential TR. 153:20-23 (emphasis added).
73/ Id. at 187:3-6.
74/ Id. at 187:8-25.
75/ Schoenbeck, Exh. Nos. DWS-6, DWS-7, DWS-9, DWS-10, DWS-11.
76/ Schoenbeck, Exh. Nos. DWS-1HCT at 7:22 – 8:6; DWS-6, DWS-7, DWS-8, DWS-9, DWS-10, DWS-11.
77/ Schoenbeck, Exh. Nos. DWS-1HCT at 8:23 – 9:2; DWS-12, DWS-14; accord De Boer, Confidential TR. 144:25 – 145:4.

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39 These facts and findings parallel other recent CPUC proceedings. In 2009, SCE filed for approval of REC sales contracts executed with PacifiCorp.[78] The CPUC approved the SCE-PacifiCorp prices as reasonable.[79] Moreover, although PacifiCorp and SCE had also settled litigation related to the Energy Crisis of 2000-2001, neither SCE nor the CPUC attributed any portion of REC price levels to an interdependent relationship with the PacifiCorp litigation settlement.[80]

C. REC Proceeds and Shareholder Debt Are Unrelated and REC Revenue Should Not Be Applied to Mitigate Shareholder Losses

1. PSE's Position is Self-Contradictory and Unreliable

40 The Company makes two admissions that demonstrate the purely speculative and ultimately weak connection between REC proceeds and the California Receivable. First, Mr. De Boer testifies that [redacted] [81] In light of this statement alone, it is difficult to justify allocation of over $21 million to shareholders for a value that [redacted]. In fact, Mr. De Boer admits that [redacted].[82]

41 Notwithstanding, PSE requests $21 million in shareholder recovery on renewable assets because [redacted] allegedly reflect [redacted][83] This brings up

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78/ Schoenbeck, Exh. Nos. DWS-16, DWS-17.
79/ Schoenbeck, Exh. No. DWS-18.
80/ Schoenbeck, Exh. Nos. DWS-1HCT at 9:8-11; DWS-16, DWS-17, DWS-18.
81/ De Boer, Exh. No. TAD-3HCT at 17:2-4.
82/ De Boer, Confidential TR. 128:9-13.
83/ De Boer, Exh. No. TAD-3HCT at 17:5.

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a second glaring fact about the speculative basis of PSE's claim—that the relied upon points of "market data are *not* plentiful."[84/] In sum, the Company concedes that it is not only impossible to quantify the alleged value of its actions, but that even the estimate of claimed value is based upon scant data. These facts hardly constitute a reasonable basis for a $21 million shareholder windfall on top of the Company's total return of and return on its investment.

42 Moreover, lest there be any question about the fortuity of the ultimate value of REC and CFI revenue, there is no dispute that renewable assets "were determined to be cost effective long-term energy resources without taking into consideration *any* value of prospective REC sales *or even* potential carbon related values, the markets for which were even more undeveloped at that time."[85/] Time and chance, not Company "ingenuity," are responsible for REC and CFI sales and PSE has no equitable claim to proceeds beyond normal revenue allowances.

2. PSE's Position Rests on Flawed Logic

43 [redacted]. The Company had offered each California utility [redacted].[86/] SCE won that bid fairly. The notion that PSE would scuttle the whole settlement—despite SCE's

84/ Id. at 9:6 (emphasis added).
85/ Id. at 5:6-9 (emphasis added).
86/ De Boer, Confidential TR. 124:20-25, 173:14-22, 177:17-20; accord De Boer, Exh. No. TAD-12HC at 3-4.

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faithful compliance with the Company's original offer—not only would have been inequitable, it would have been contrary to PSE's own financial interests.

44 Another serious flaw in the Company's logic concerns the role of SDG&E. [redacted].[87] SDG&E, along with SCE and PG&E, [redacted].[88] [redacted].[89] Ultimately, however, [redacted].[90]

45 The flaw in the Company's position is apparent when recognizing that SDG&E has received the full benefit of the PSE settlement, [redacted].[91] According to PSE, SCE and PG&E paid higher than market REC prices, [redacted], [redacted]. It is unlikely that SCE and PG&E [redacted]. Conversely, if SCE and PG&E willingly paid market prices for badly needed RECs to satisfy California PRS requirements, no quandary exists.

3. PSE Assumed the Risk of the California Receivable

87/ De Boer, Confidential TR. 121:2-8.
88/ De Boer, Exh. No. TAD-12HC at 3-4.
89/ De Boer, Exh. No. TAD-3HCT at 8:15 – 9:3.
90/ De Boer, Confidential TR. 124:14-16.
91/ Id. at 124:17-19, 125:4-7.

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46 When PSE received Commission approval to merge with Washington Natural Gas Company in 1997, a rate stabilization plan was ordered until December 31, 2001.[92] During that same period, PSE had no rate mechanism to track power cost variations akin to the power cost adjustment mechanism that is currently in place.[93] Hence, PSE's shareholders assumed all of the risks and enjoyed all of the benefits resulting from wholesale activities during the period covering the Energy Crisis of 2000-2001,[94] from which the California Receivable litigation originates.

47 Logic dictates against allocating a portion of REC Revenue in this proceeding to mitigate shareholder Energy Crisis loss. All benefit derived from wholesale activity in 2000-2001 was the sole entitlement of PSE shareholders. Conversely, shareholders should also absorb any adverse results of the Company's wholesale trading activity during that same period. Indeed, as Mr. De Boer, admitted on cross examination, the "California receivable would never be collected from retail rate payers in Washington under any accounting scenario."[95]

48 PSE already earns a return on and a return of its capital invested in the renewable resources that generate the REC Revenues. The REC Revenues are a ratepayer benefit, and giving any ratepayer benefit to PSE's shareholders would result in cost over recovery. The Company has already levied the burden associated with mitigating its own California Receivable losses upon ratepayers for years, by

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92/ Re Application of PSE, Docket No. UE-960195, Fourteenth Suppl. Order (Feb. 5, 1997).
93/ Schoenbeck, Exh. No. DWS-1HCT at 9:24 – 10:2.
94/ Id. at 10:2-4.
95/ De Boer, TR. 109:23-25.

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including over $4 million worth of legal and consultant fees in rates.[96] There is no justification to allow any further recovery on the California Receivable.

D. PSE's Proposed Revenue Distribution Unduly Harms Ratepayers

49 PSE proposes that a portion of the REC Revenues first be used to offset the California Receivable and additional low income conservation programs, and that any remaining revenues would be used to reduce regulatory assets.[97] Under the Company's proposal, the allocation of REC and CFI proceeds is front loaded to benefit shareholders and low income programs, to the detriment of the vast majority of ratepayers. PSE would earmark existing net revenue associated CFIs and non-contract REC sales to fund half of the low income programs,[98] while diverting the remaining revenues to shareholders and low income programs until shareholders and low income programs receive a full allocation.[99] There is no justification for this preferential treatment.

50 More importantly, crediting the REC revenues to a regulatory asset, rather than a direct credit to customers unnecessarily reduces the benefits to current ratepayers who have paid for the resources that generated the REC Revenues. All REC revenues should be promptly refunded back to customers as soon as possible after the revenues are received by PSE through a direct rate credit. This result is also supported by the need to offset the rate increase in PSE's current rate case given current economic conditions.

96/ Schoenbeck, Exh. No. DWS-15; De Boer, Confidential TR. 183:19 – 184:19.
97/ De Boer, Exh. No. TAD-1T at 9:5 – 10: 7.
98/ De Boer, Exh. No. TAD-1T at 4:12-17; DWS-1HCT at 5:11-13.
99/ De Boer, Exh. No. TAD-1T at 4:12 – 5:5; DWS-1HCT at 5:13 – 6:1.

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1. The Commission Should Not Provide PSE Shareholders or the Low Income Programs Any Revenues More Quickly Than Ratepayers

51 PSE proposes to provide shareholders and low income programs with a full allocation benefits by [redacted],[100] while ratepayers would not receive a full allocation until later.[101] ICNU opposes allocation to shareholders and low income programs as an initial matter; however, there is no reason to provide the benefits of the RECs sales to shareholders and low income programs more quickly, *even if* the WUTC approves an allocation to these groups. The uneven distribution proposed by the Company harms ratepayers when the time vSDalue of money is considered. As demonstrated by ICNU, ratepayers suffer a [redacted] loss on a net present value ("NPV") basis under the Company plan.[102] There is simply no justification for effectively penalizing the vast majority of PSE customers (the very group which pays for the renewable resources that generate the REC Revenues) by paying shareholders and low income customers first.

2. All REC Revenues Should Be Immediately Returned as Rate Credit and Not Used to Reduce Regulatory Assets

52 While PSE originally proposed that any REC proceeds should be used to offset its regulatory assets,[103] PSE also "recognizes that there are other reasonable approaches to allocating these credits to customers, as suggested by the parties to this case."[104] PSE never proposed a specific methodology regarding how to credit net revenues to

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100/ Schoenbeck, Exh. No. DWS-1HCT at 6:1-4.
101/ See id. at 6:4-5.
102/ Schoenbeck, Exh. No. DWS-1HCT at 6:5-11.
103/ De Boer, Exh. No. TAD-1T at 9:5 – 10: 7.
104/ De Boer, Exh. No. TAD-3T at 19:18 – 19: 19.

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customers, and PSE stated that it "has not made a proposal as to how the underlying tariff would credit customers."[105] ICNU proposes that all net revenue simply be flowed back to customers through a separate tariff rider, in the exact same manner that the costs of renewable facilities providing the REC revenue are assigned in rates.[106] REC revenues would flow back to ratepayers as PSE receives them, and all amounts would be returned to customers around [redacted].[107]

53 Staff supports using the REC proceeds to reduce PSE's regulatory assets, but also recognizes that the direct refund approach has merit. Both approaches match "the distribution of REC/CFI benefits with the manner in which the corresponding assets are allocated to customers in the ratemaking process."[108] Staff recognizes that the direct refund approach is "fair" but prefers a regulatory offset because the benefits will accrue over a longer time period and it may not result in a rate increase when it expires.[109] Staff's proposes to reduce PSE's regulatory liability account over a period of ten years.[110]

54 The Commission should reject Staff's proposal and all REC revenues should be paid to ratepayers as an immediate rate credit that occurs at the same time the PSE obtains the REC revenues. The direct benefit approach should be approved by the Commission precisely because it will accrue immediately, over a shorter time period, and will result in a larger credit to ratepayers. Ratepayers are experiencing the worst

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105/ Schoenbeck, Exh. No. DWS-19 at 1.
106/ Schoenbeck, Exh. No. DWS-1HCT at 11:11 – 12:8.
107/ See Schoenbeck, Exh. No. DWS-1HCT at 6.
108/ Parvinen, Exh. No. MPP-1T at 8:13 – 9:23.
109/ Parvinen, Exh. No. MPP-1T at 9:18-23.
110/ Parvinen, Exh. No. MPP-1T at 8:16-18, 9:3-6.

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economic conditions this country has experienced since the Great Depression, and the Commission should utilize whatever regulatory tools available to support customers in these difficult times. In addition, the Commission is considering PSE's request for an overall general rate increase, and the REC revenues should be used to offset any harmful impacts to customers that flow out of that proceeding.

55 The problem of intergenerational inequity comes into full force if revenue offsets are not promptly applied—i.e., past and present ratepayers will end up subsidizing future ratepayers unnecessarily.[111/] Future ratepayers should not get future REC benefits *plus* revenue from past RECs for which current ratepayers have been charged. Those who have been and are currently paying for RECs should receive the benefit for them as quickly as possible.[112/] Therefore, the REC proceeds should be passed through more or less as they are received.

56 Essentially, the Commission is presented with a policy decision regarding whether to return REC revenues to ratepayers more quickly in larger amounts, or in smaller amounts over a longer period of time. The equities in this proceeding, including returning the amounts to those customers which are currently paying for the wind projects, the time value of money and the current economic climate, all support returning the monies directly and expeditiously to customers.

E. Low Income Program Allocation is Best Determined in a General Rate Case

57 ICNU has often supported or not opposed low income assistance programs in the

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111/ 1 Leonard S. Goodman, *The Process of Ratemaking* at 508, 515.
112/ Accord Parvinen, Exh. No. MPP-1HCT at 8:3-11.

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past.[113] In opposing PSE's proposal, ICNU is not taking an *anti*-low income position. Rather, ICNU's position is one of essential fairness: no customer class, whether industrial or low income residential, should receive preference in REC revenue allocation in disproportion to the Company's cost-of-service allocation.[114] As Staff rightly points out: "Giving $10 million to $20 million exclusively to one group of customers violates th[e] principle of fairness."[115]

58 The Commission generally considers low income assistance in the context of a general rate case, when the balance of all factors may be considered, and this policy should also control in this proceeding.[116] The proposal to assist low income customers is not necessarily problematic on its merits, but it is inappropriate for determination in the present forum of a deferral case.

59 Alternatively, if the Commission approves a low income allocation in this proceeding, ICNU recommends that any amounts earmarked for low income programs be funded through the residential class allocation.[117] Again, simple equity supports such a distribution—the residential class is the direct and primary beneficiary of low income programs, so the residential class should also fund such programs.

113/ E.g., WUTC v. PSE, Docket No. UE-060266, Final Order at ¶ 144 (Jan. 5, 2007); WUTC v. PSE, Docket No. UE-072300, Final Order at ¶¶ 49, 50 (Oct. 8, 2008); WUTC v. PacifiCorp, Docket No. UE-090205, Final Order at ¶ 25 (Dec. 16, 2009).

114/ Schoenbeck, Exh. No. DWS-1HCT at 10:19-22.

115/ Parvinen, Exh. No. MPP-1HCT at 11:17-18.

116/ E.g., WUTC v. PSE, Docket No. UE-060266, Final Order at ¶ 144; WUTC v. PSE, Docket No. UE-072300, Final Order at ¶¶ 49, 50; WUTC v. PacifiCorp, Docket No. UE-090205, Final Order at ¶ 25; see also WUTC v. PacifiCorp, Docket No. UE-080220, Final Order at ¶¶ 37, 39 (Oct. 8, 2008) (including WUTC approval of general rate case settlement in recognition of the argument that low income customer and company rate interests were balanced).

117/ Schoenbeck, Exh. No. DWS-1HCT at 11:3-10.

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60 PSE essentially advances a "trickle-up" or "rising tide lifts all boats" argument about sundry all-class benefits that will purportedly result from funding low income programs;[118] but PSE's claims are contradicted by Staff, which testifies that the Company's low income proposals would not be cost effective.[119] Hence, the Company's allocation will not only harm all ratepayers generally, but will also discredit the validity of PSE's overall conservation program by subjecting the Company to the reasonable criticism that its investments are not cost effective.

61 PSE and the Joint Parties' proposal to provide the low income programs with more than their share of REC revenues is contrasted with ICNU's position, which does not favor any customer group. In fact, ICNU's proposal would preclude all benefit to direct access industrial customers under Schedule 449.[120] Thus, ICNU is not seeking to maximize the allocation potential for its members, in disregard to fairness, even though many ICNU members receive service under Schedule 449. In contrast, while residential customers would already be receiving *over half* the REC revenue allocation using the Company cost-of-service study,[121] PSE and the Joint Parties propose to allocate still more revenue to low-income programs. Such an unbalanced allocation would be unjust.

118/ Englert, et al., Exh. No. JOINT-2T at 12:4 – 14:20; 16:1-20.
119/ Parvinen, Exh. No. MPP-1HCT at 12:4-12, 12:18-21, 13:1-7.
120/ Schoenbeck, Exh. No. DWS-1HCT at 12:1.
121/ Id.

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III. CONCLUSION

62 ICNU urges the Commission to reject PSE's proposed REC Revenue allocations to Company shareholders and low income programs, and to order PSE to offset all REC and CFI net revenue against ratepayer costs for renewable generating resources. ICNU requests that revenues be flowed directly back to customers, using the same cost-of-service allocation the Company uses in rates. Regardless of whether the Commission provides PSE or the low income programs a portion of the REC Revenues, the Commission should ensure that REC Revenues are returned to ratepayers as quickly as possible through a separate rate credit. Also, if the Commission allows an allocation to fund low income programs, ICNU alternatively requests that all funding earmarked for low income programs be diverted from the residential class which directly and primarily benefits from such programs.

Dated in Portland, Oregon, this 17th day of March, 2010.

Respectfully submitted,

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Of Attorneys for Industrial Customers
of Northwest Utilities

BEFORE THE WASHINGTON UTILITIES & TRANSPORTATION COMMISSION

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

DIRECT TESTIMONY OF SCOTT NORWOOD (SN-1T)

ON BEHALF OF

PUBLIC COUNSEL

JANUARY 28, 2010

REDACTED VERSION

DIRECT TESTIMONY OF SCOTT NORWOOD (SN-1T)
DOCKET NO. UE-070725

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DOCKET NO. UE-070725

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I. INTRODUCTION / SUMMARY

Q: Please state your name and business address.

A: My name is Scott Norwood. I am President of Norwood Energy Consulting, L.L.C. My business address is P.O. Box 30197, Austin, Texas 78755-3197.

Q: By whom are you employed and in what capacity?

A: I am a self-employed energy consultant specializing in the areas of electric utility regulation, resource planning and energy procurement.

Q: On whose behalf are you testifying?

A: I am testifying on behalf of the Public Counsel Section of the Washington Attorney General's Office (Public Counsel).

Q: Please describe your professional qualifications.

A: I have over 28 years of experience in the electric utility industry. After graduating from the University of Texas in 1980 with a Bachelor of Science degree in electrical engineering, I began my career as a power plant engineer for the City of Austin's Electric Utility Department where I was responsible for electrical maintenance and design projects for the City's three gas-fired power plants. In January 1984, I joined the staff of the Public Utility Commission of Texas as Manager of Power Plant Engineering. In that capacity I was responsible for addressing resource planning, fuel and purchased power cost issues presented in regulatory filings before the Texas Commission. In 1986, I joined GDS Associates, Inc., a Marietta, Georgia-based consulting firm that specializes in electric utility regulatory consulting and resource planning. I was elected a Principal of GDS in 1990 and directed the firm's Deregulation Services

1 Department until January 2004, when I left GDS to form Norwood Energy
2 Consulting, LLC. The focus of my current consulting practice is energy planning,
3 procurement and regulation. Exhibit No. SN-2 provides a more detailed summary
4 of my background and experience.

5 Q: **Have you previously testified before the Washington Utilities and**
6 **Transportation Commission or other state utility commissions?**

7 A: Yes. I recently presented testimony on behalf of Public Counsel in Puget Sound
8 Energy, Inc.'s (PSE) pending general rate case (Docket Nos. UE-090704/UG-
9 090705). I have also testified on behalf of consumers, government agencies, and
10 consumer-owned utilities in numerous past regulatory proceedings before state
11 regulatory commissions in Arkansas, Georgia, Illinois, Iowa, Louisiana,
12 Michigan, Missouri, New Jersey, Oklahoma, Texas, Virginia, and Wisconsin.

13 **Q: What is the purpose of your testimony?**

14 A: The purpose of my testimony is to present my analysis and recommendations
15 regarding PSE's proposed allocation and ratemaking treatment of the net proceeds
16 from Renewable Energy Credit (REC) and Carbon Financial Instrument (CFI)
17 sales.

18 **Q: What exhibits are you sponsoring in this proceeding?**

19 A: I am sponsoring 14 exhibits, including my testimony. A number of these exhibits
20 are discovery responses regarding PSE's California REC sales that were provided
21 in Docket Nos. UE-090704/UG-090705, the Company's pending general rate
22 case.[1]

[1] *See* Exhibit No. SN-3, PSE's Response to Public Counsel Data Request No. 28.

II. SUMMARY OF TESTIMONY

Q: Please summarize your testimony and recommendations.

A: Through November of 2009, PSE earned approximately **[BEGIN HIGHLY CONFIDENTIAL]** XXXXXXX **[END HIGHLY CONFIDENTIAL]** from the sale of Renewable Energy Credits (RECs) and Carbon Financial Instruments (CFIs).[2] The Company forecasts that it will earn an additional **[BEGIN HIGHLY CONFIDENTIAL]** XXXXXXX **[END HIGHLY CONFIDENTIAL]** over the next six (6) years from the sale of RECs under existing contracts with California utilities and other parties.[3] PSE requests that it be allowed to retain approximately $21.1 million of the net proceeds from REC sales to offset unpaid amounts it claims to be owed by California utilities (California Receivable) for power sold by PSE during 2000 and 2001. However, PSE has not demonstrated why it is entitled to retain $21.1 million of REC proceeds or that its California Receivable claim is even valid or recoverable. Moreover, PSE's retail customers pay all costs of the generating facilities from which RECs and CFIs are derived and therefore are entitled to receive 100 percent of related REC and CFI sales proceeds as a matter of basic equity, just as such customers currently receive all revenues earned from off-system energy sales supplied from PSE's generating assets.

[2] *See* Exhibit No. SN-4HC, PSE's Highly Confidential Responses to Public Counsel Data Requests Nos. 30 and 31.
[3] *See* Exhibit No. SN-5HC, PSE's Highly Confidential Response to Public Counsel Data Request No. 37, Rev. 01.

I have several recommendations regarding the calculation of net proceeds from PSE's REC and CFI sales, the allocation of proceeds from such sales, and the ratemaking treatment of such proceeds. First, I recommend that 100 percent of net proceeds from REC and CFI sales, along with any energy sales margins associated with the off-system energy sales component of these transactions, be credited to PSE's ratepayers and reflected in a manner that provides immediate customer benefits to the extent possible. In this regard, I recommend that the **[BEGIN HIGHLY CONFIDENTIAL]** XXXXXXX **[END HIGHLY CONFIDENTIAL]** of accumulated REC and CFI revenues and energy sales margins, plus associated interest, that existed as of the end of November 2009, be immediately applied to reduce the rate base of PSE's Hopkins Ridge and Wild Horse wind generation facilities and that this adjustment be reflected in PSE's approved rates resulting from the Company's pending general rate case (Docket Nos. UE-090704/UG-090705).

While I do not support or oppose the proposal by PSE and the Joint Parties that 20 percent of REC and CFI sales proceeds, up to a cumulative total amount of $20 million, be allocated to help fund low-income renewable energy and energy efficiency programs, I do recommend that, should the Commission approve this proposal, such amounts be derived from net REC proceeds collected after November 2009. I further recommend that all other REC and CFI sale proceeds and any related energy sales margins collected later than November 2009, after any designated monthly allocation to low-income programs is made, be

immediately credited to all PSE retail customers through a non-general rate tariff, similar to the Company's Production Tax Credit (PTC) Tracker mechanism.

Finally, I recommend that PSE's calculations of REC and CFI proceeds and related energy margins be subject to review and final reconciliation in the Company's next general rate case, and that the Commission establish terms for reporting and monitoring of PSE's management and accounting for REC sales proceeds on an ongoing basis, consistent with the method approved by the Commission in PacifiCorp's most recent general rate case, Docket No. UE-090205.

The bases for these recommendations are explained in the remaining sections of my testimony.

III. OVERVIEW OF PSE'S PROPOSALS

Q: What is PSE proposing in this case?

A: PSE is requesting approval to defer the net proceeds from its past and future sales of RECs and CFIs.[4] The Company is requesting that it be allowed to use up to $20 million of the REC and CFI proceeds to fund low-income energy efficiency measures and energy-related repairs and renewable energy systems for low-income residential locations.[5] PSE further requests that it be allowed to retain $21,062,800 of REC sale proceeds to offset its California Receivable for power sold by PSE during 2000 and 2001.[6] Finally, PSE proposes to use the remainder

[4] Amended Petition, page 1.
[5] *Id.*, page 7.
[6] *Id.*, page 8.

of the REC proceeds to offset regulatory assets that are currently recovered through its base rates.[7]

Q: What are Renewable Energy Credits?

A: Washington's Energy Independence Act defines Renewable Energy Credits under Section RCW 19.285.030 as:

> . . .a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by fresh water, the certificate includes all of the non-power attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.

In essence, RECs represent the right to claim environmental attributes or benefits associated with energy produced by a renewable generation facility.[8] RECs are characterized by the energy generated from renewable resources; one REC equals one megawatt-hour (MWh) produced from an eligible renewable resource.[9] Importantly, RECs can be used to demonstrate compliance with Renewable Portfolio Standards (RPS).[10]

Q: What are Carbon Financial Instruments (CFI)?

A: A CFI is a commodity sold on the Chicago Climate Exchange which is equivalent to a 100 metric ton reduction of CO_2 emissions.[11]

Q: What are the total net proceeds from PSE's sales of RECs and CFIs to date?

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[7] *Id.*
[8] *Id.*, page 2.
[9] *Id.*
[10] *Id.*, page 3.
[11] *Id.*, page 4.

A: From August of 2007 through November of 2009, PSE sold **[BEGIN HIGHLY CONFIDENTIAL]** XXXXXX **[END HIGHLY CONFIDENTIAL]** RECs and earned total net proceeds of **[BEGIN HIGHLY CONFIDENTIAL]** XXXX XXXXX **[END HIGHLY CONFIDENTIAL]** from such sales.[12] Through November of 2009, PSE recorded total net proceeds of **[BEGIN CONFIDENTIAL]** XXXXX **[END CONFIDENTIAL]** from sales of CFIs.[13]

Q: What is PSE's forecast of REC sales revenues over the next several years?

A: PSE's forecast of REC sales proceeds over the next several years is summarized below in Table 1. This forecast reflects the REC sales volumes and prices specified under PSE's sales contracts with Southern California Edison (SCE), Pacific Gas and Electric Company (PG&E), and other parties, which were executed during 2008 and 2009.[14]

[12] *See* Exhibit No. SN-4HC, PSE's Highly Confidential Response to Public Counsel Data Request No. 30.
[13] *See* Exhibit No. SN-4HC, PSE's Confidential Response to Public Counsel Data Request No. 31.
[14] Legislation currently being considered in Washington state may expand the generation facilities from which RECs may be derived, and thus may increase the number of excess RECs PSE may claim and sell. *See e.g.* H.B. 3034 and S.B. 6672, 61st Leg., §1 (Wash. 2010).

[BEGIN HIGHLY CONFIDENTIAL]

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[END HIGHLY CONFIDENTIAL]

IV. ENTITLEMENT TO REC AND CFI PROCEEDS

Q: How are PSE's RECs and CFIs created?

A: The majority of PSE's RECs are created as a result of the generation of renewable energy from the Company's Wildhorse and Hopkins Ridge wind farms, and Klondike III Wind Power Purchase Agreement (PPA). The CFIs referenced in this case were created as a result of PSE reducing the level of carbon emissions on its system from a baseline level established during the 1998 to 2001 period. The reduction in carbon emissions has been accomplished primarily by the Company's acquisition of renewable resources and by the acquisition of gas-fired, combined cycle generating resources that have low carbon emissions.

Q: Who pays for the capital and operating costs of the renewable resources and other generating resources from which RECs and CFIs sold by PSE are derived?

A: PSE's retail customers in Washington pay all of the costs for the Hopkins Ridge and Wild Horse wind generation facilities, and the Klondike III Wind PPA (from which the majority of PSE's RECs are derived) through charges embedded in PSE's base rates. PSE's retail customers also pay for other generating resource additions to PSE's system that have resulted in the creation of the CFIs (and related revenues) that are at issue in this case.

Q: How much do PSE's ratepayers pay annually for energy generated from the Hopkins Ridge, Wild Horse, and Klondike III PPA wind resources?

A: The total annual revenue requirement for the Hopkins Ridge, Wild Horse, and Klondike III PPA paid by ratepayers is approximately **[BEGIN CONFIDENTIAL]** XXX **[END CONFIDENTIAL]** million per year.[15]

Q: What cost is incurred by PSE's shareholders for the Hopkins Ridge, Wild Horse, and Klondike III PPA wind resources?

A: PSE's shareholders do not incur any costs for the Hopkins Ridge, Wild Horse, or Klondike III PPA wind resources; in fact, the Company's shareholders earn approximately $27.3 million per year in equity return for the Hopkins Ridge and Wild Horse wind projects.[16]

[15] *See* Exhibit No. SN-6C, PSE's Responses to Public Counsel Data Requests Nos. 350 and 351 and Mills' Exhibit DEM-11C from Docket No. UE-090704/UG-090705.
[16] *See* Exhibit No. SN-7.

1 **Q: What portion of the net proceeds from REC and CFI sales should be**
2 **returned to PSE's ratepayers?**
3 A: PSE's ratepayers should receive 100 percent of the net proceeds derived from
4 sales of RECs and CFIs because ratepayers pay all costs of the generating
5 resources from which such RECs and CFIs are derived, including an equity return
6 paid to PSE's shareholders for the investment in such projects. Moreover, it is
7 important to recognize that, even after receiving 100 percent of the credit for REC
8 and CFI sales proceeds, PSE's ratepayers will likely still be paying significantly
9 more for wind energy than they would otherwise pay if PSE had purchased such
10 energy from the market. For example, PSE's projected cost of energy from the
11 Hopkins Ridge, Wild Horse, and Klondike III Wind PPA in its pending base rate
12 case is approximately $98/MWh, which is approximately 115 percent higher than
13 PSE's forecasted average market price of energy during this same period.[17] Even
14 after 100 percent of the net proceeds from RECs and CFIs sales are credited to
15 customers as I have recommended, the net cost of energy paid by ratepayers for
16 energy delivered from these wind energy projects during the rate year ending
17 March 30, 2011 would be approximately $88/MWh, which is approximately 95
18 percent higher than PSE's forecasted average price of market energy purchases
19 during the rate year.[18]
20 **Q: Does PSE credit other benefits of wind generation to its retail customers?**
21 A: Yes. PSE presently credits 100 percent of the wind production tax credits to
22

[17] *See* Exhibit No. SN-8.
[18] *Id.*

ratepayers through its Production Tax Credit (PTC) Tracker mechanism.

Q: Does PSE credit 100 percent of the net proceeds from the off-system sales of energy supplied from other generating assets to its native retail customers?

A: Yes. The net proceeds from PSE's REC sales are analogous to off-system energy sales margins which are also credited entirely to customers by reducing the level of system fuel expense included in PSE's power cost rate.

Q: Why does PSE believe it is entitled to retain $21.1 million of REC sales proceeds when the Company does not contribute any amount to the cost of wind generation from which such RECs sales are supplied?

A: PSE has indicated that it is appropriate for it to retain approximately $21.1 million of REC sales proceeds to satisfy the California Receivable that the Company claims it is owed by California utilities, because "the tremendous increase in benefits that customers will receive would not have been available absent the settlement" with such utilities.[19] As discussed in the next section of my testimony, PSE has not demonstrated the basis for its $21.1 million claim nor has it proven that its native retail customers will receive a tremendous increase in benefits as a result of its settlements with California utilities.

Q. Please summarize your conclusions regarding the appropriate allocation of REC and CFI sale proceeds.

A. PSE's retail customers pay all costs of the generating facilities from which RECs and CFIs are derived, and therefore are entitled to receive 100 percent of related REC and CFI sales proceeds as a matter of basic equity, just as such customers

[19] *See* Exhibit No. SN-9, PSE's Response to PC Data Request No. 008.

currently receive 100 percent of wind production tax credits and 100 percent of revenues earned from off-system energy sales supplied from PSE's generating assets. PSE has not demonstrated why it is entitled to retain approximately $21.1 million of REC sales proceeds or whether its California Receivables claim is even valid or recoverable.

V. PSE'S REQUEST TO RETAIN REC SALE PROCEEDS

Q: What information has PSE provided to support its request to retain $21.1 million of REC proceeds for its California litigation claim?

A: PSE has presented certain information prepared by the California Independent Systems Operator (ISO) that details the price and payments received for power it sold into the California market, and which shows that the net balance owed to the Company was approximately $21.1 million.[20] The Company has stated that this amount represents "the discounted amount that PSE had a reasonable expectation that it would be able to collect from California, before interest, if the litigation ran its course."[21] However, after more than eight years of litigation and failed attempts at mediation and settlement, the Company admits that central issues of the litigation remained far from resolution.[22] Therefore, there was significant

[20] *See* Exhibit No. SN-10C, PSE's Response to PC Data Request No. 10.
[21] *Id.*
[22] *See* Exhibit SN-9, PSE's Response to PC Data Request No. 08.

1 uncertainty as to whether PSE would ever have recovered the $21.1 million it now
2 claims that it is entitled to collect for its California Receivable.[23]

3 **Q: Does the $21.1 million claimed by PSE represent costs actually incurred by**
4 **the Company to supply the energy sales at issue, the price of such sales, or**
5 **some other amount?**

6 A: PSE indicates that the $21.1 million it seeks to retain is neither the incurred cost
7 nor the price of the energy sales under dispute.[24] In fact, the Company states that
8 it does not have information on either the cost or the volume of the energy sales
9 related to this claim.[25]

10 **Q: Has PSE presented any evidence to demonstrate that the Company's**
11 **proposal to retain $21.1 million of the net proceeds from REC sales is**
12 **justified by the price it received for RECs sold to SCE and PG&E?**

13 A: No. The Company has stated that its customers will receive a tremendous
14 increase in benefits due to the prices for RECs that were negotiated and obtained
15 as a result of the settlement.[26] PSE has not provided any testimony or other
16 evidence that demonstrates the value or probability of recovery of its California
17 Receivable claim or to otherwise support its position that the prices it obtained for

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[23] It is my understanding as a non-attorney that, as a general matter, costs must be known and measurable to be recoverable under normal regulated ratemaking practices. The party seeking to recover a cost must offer factual or other showings to this effect. A cost is "known" when the effect of the related event will be in place when rates will likely be in effect.[23] A cost is generally "measurable" when documented by an "actual expenditure, invoice, contract, or other specific obligation," while costs from estimates and projections are generally not measurable. *See WUTC v. Avista Corporation d/b/a/ Avista Utilities,* WUTC Docket No. UE-090134/UG-090135 (*consolidated*), Final Order (Order 10), ¶45. In this case, PSE has not offered any showing of known or measurable costs.

[24] *See* Exhibit No. SN-10C, PSE's Response to PC Data Request No. 10.

[25] *Id.*

[26] *See* Exhibit No. SN-9, PSE's Response to PC Data Request No. 08.

RECs sold to SCE and PG&E could not have been obtained without the settlement.[27]

Q: Was PSE able to negotiate similar REC sales prices under agreements which were not conditioned upon approval of the California litigation settlement?

A: Yes. The price of RECs obtained by PSE under a subsequent sale agreement with SCE that was executed in May 2009 and was not conditioned upon approval of the California litigation settlement agreement, was only approximately 13 percent lower than the REC sales prices negotiated under the "settlement agreements" with SCE and PG&E.[28] Moreover, PSE's REC sales agreement with PG&E, which had slightly *higher* pricing than the REC sale agreement with SCE, also was not conditioned upon approval of the California litigation settlement agreement. The fact that PSE was able to obtain similar pricing for REC sales that were negotiated in the same general timeframe but without linkage to the California litigation settlement appears to refute PSE's claim that customers could not have achieved a similar level of benefits without the litigation settlement.

Q: Is PSE seeking to retain a portion of the net revenues from REC sales limited only to proceeds from sales that are related to its California litigation settlement?

A: No. It appears that PSE is requesting that it be allowed to retain 40 percent of all REC proceeds up to $21,062,800, including proceeds from REC sales unrelated to its California litigation settlement.[29] I see no apparent basis for the Company's

[27] *See* Exhibit No. SN-14HC, PSE's Responses to PC Data Request Nos. 09 and 12.
[28] *See* Exhibit No. SN-10C, PSE's Response to PC Data Request No. 10.
[29] Amended Petition, page 8, and Direct Testimony of Tom De Boer, pages 3-4.

1 claim to retain 40 percent of REC proceeds, particularly those REC proceeds
2 which are unrelated to its California litigation settlement.
3 **Q: Absent the REC sales and this Petition, would PSE be entitled to recover**
4 **costs associated with the California litigation through its Washington retail**
5 **rates?**
6 A: No. All costs associated with the California Receivable and subsequent litigation
7 relate to non-regulated wholesale power sales. Only in the event that PSE
8 received revenue from such sales that it shared with its Washington retail
9 customers would these litigation costs even be something that the Commission
10 should consider for recovery through retail rates. This is not the case here.
11 **Q: Would PSE's retail customers have benefitted from the past California**
12 **energy sales which resulted in the California Receivable claim that the**
13 **Company seeks to recover in this case?**
14 A: No. The California energy sales which are the basis for PSE's claim were
15 speculative, market-based, off-system power sales that the Company pursued in
16 an effort to produce additional profits for its shareholders. PSE was under no
17 obligation to pursue such sales and should have recognized the inherent risk of
18 selling energy into the (then) new California wholesale power market. The
19 extremely high prices for energy sold in the California market during this period
20 were in-part reflective of the high risk of sales into this market. In any event, the
21 proceeds from PSE's energy sales to California during 2000 and 2001 would not

have been shared with PSE's retail customers because the Company was under a five-year rate freeze during this period.[30]

Q: Did PSE include the off-system sales revenues associated with its California REC sales contracts in its updated electric baseline power forecast in its pending general rate case (Docket No. UE-090704)?

A. No. PSE did not reflect the off-system energy sales associated with the REC sales agreements in the proposed baseline power cost forecast in the Company's pending general rate case. It is likely that there will be opportunities for PSE to realize significant profits on sales of energy under these agreements which are priced based on Mid-C on-peak indices, since PSE currently has surplus energy on its system and has energy resources whose variable costs are forecasted to be below Mid-C market prices in certain on-peak periods.[31] Under PSE's proposals, these energy sales profits would flow to the Company and its shareholders and therefore would provide another source of compensation for PSE's California Receivables claim. For example, if PSE was able to deliver energy to SCE and PG&E for a cost of only $2/MWh below the Mid-C on-peak index energy price reflected in such contracts, the Company would earn approximately $30 million of profits under these transactions, which is $11.1 million more than its California Receivables claim. These off-system energy sales profits also should be returned entirely to customers who pay all non-fuel costs of the generating resources from

[30] *See* Exhibit No. SN-11, PSE's Response to PC Data Request No. 49.
[31] *See* Mills' Exhibit No. DEM-11C from Docket Nos. UE-090704/UG-090705, which is contained in Exhibit No. SN-6C.

which such energy would be supplied. Returning these profits is also consistent with normal treatment of all such off-system sales.

Q: Are you aware of any other reasons why PSE should be allowed to retain $21.1 million of REC sales proceeds to offset its California Receivables claim?

A: No. As a matter of basic equity, PSE's ratepayers are entitled to all REC proceeds since ratepayers pay all costs of the wind generation facilities which supply RECs, including an equity return of approximately $27.3 million per year on such wind facilities to PSE's shareholders, as a component of the Company's regulated retail rates.

Q: Please summarize your conclusions regarding PSE's claim to retain $21.1 million of REC sales proceeds in this case.

A: It is not reasonable to allow PSE to retain $21.1 million, or any amount, of the REC sales proceeds, particularly without evidence as to the basis for the amounts claimed, and without demonstration that the price PSE received for the RECs sold to the California utilities could not have been obtained without the settlement. I recommend that 100 percent of PSE's REC sales proceeds be returned to its retail customers who pay 100 percent of the cost of wind generation resources from which such RECs are supplied. In addition, all profits from the off-system energy sales made under the contracts negotiated with California utilities should be returned entirely to customers.

VI. CALCULATION AND RATEMAKING TREATMENT OF REC AND CFI PROCEEDS

Q: What are the remaining issues regarding PSE's proposed treatment of REC and CFI revenues?

A: Beyond what I discussed earlier, there are three additional issues that must be addressed:

- What is the appropriate method of calculating net proceeds from REC and CFI sales?
- How should the amount of REC and CFI sale proceeds be reflected in rates?
- What regulatory review process should be employed to ensure that the REC and CFI sales proceeds are properly calculated and returned to ratepayers in the future?

Q: How does PSE propose to calculate the net proceeds from REC and CFI sales?

A: PSE proposes to calculate the net proceeds from REC and CFI sales by subtracting the total costs and credits associated with such sales, or required to facilitate such sales, from the total sales revenues.[32] The Company indicates that these costs would include:

> expenses incurred in negotiating the transactions, finalizing the sales agreements and fulfilling the obligations under such agreements, including, but not limited to. . .attorney fees, broker commissions, royalty payments or other third party fees

[32] Amended Petition, ¶12.

> (such as WREGIS-related fees, the Center for Resource Solution fees and audit fees) and the net costs of the energy component of the transaction, if any.[33]

Q: What amount of the above expenses has PSE recorded to-date in conjunction with its past REC and CFI sales?

A: As shown in Table 2, PSE has recorded approximately **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** in total expenses associated with its REC and CFI sales through November of 2009.

[BEGIN HIGHLY CONFIDENTIAL]

[redacted]

[END HIGHLY CONFIDENTIAL]

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[33] *Id.*

1 **Q: Do you have any concerns with PSE's proposed calculation of net proceeds of**
2 **RECs and CFIs?**
3 A: Yes; I have two basic concerns. My first concern is that the definition of costs
4 that PSE proposes is vague and could allow the Company to recover amounts that
5 may be only peripherally related to the sales or are already recovered through
6 PSE's base rates. For example, PSE has not directly stated whether its calculation
7 of the net proceeds of REC and CFI sales may include labor or other costs that
8 have also been reflected in its retail base rates.
9 My second concern relates to PSE's proposal to include "net costs of the
10 energy component of the transaction" as a component of the costs considered in
11 determining net proceeds from REC and CFI sales.[34] PSE indicates that these
12 costs represent any difference between the contract price for energy and the cost
13 incurred in supplying the energy transaction.[35] There is no apparent relationship
14 between the cost of energy sold and the contract price of RECs under PSE's REC
15 sale agreements. Therefore it would be unreasonable to adjust the net proceeds
16 from RECs to reflect any such energy cost differences.
17 **Q: What is your recommendation to address the concern regarding the potential**
18 **for double-recovery or recovery of unrelated costs through the REC net**
19 **proceeds calculation?**
20 A: The Commission should require regular reporting of REC revenues and costs so
21 that the Commission Staff and other interested parties can monitor the level of
22

[34] *Id.*
[35] *See* Exhibit No. SN-12, PSE's Response to Public Counsel Data Request No. 22.

1 REC proceeds reflected in rate credits to customers on an ongoing basis. In
2 addition, I recommend that any costs reflected in PSE's REC proceeds
3 calculations be subject to review and reconciliation in future PSE general rate
4 proceedings.

5 **Q. What is PSE's proposed ratemaking treatment of REC and CFI proceeds**
6 **that are allocated to customers under the Company's proposal in this case?**

7 A. PSE proposes to allocate the $20 million of REC and CFI proceeds to low-income
8 renewable energy and energy efficiency programs over a seven year period.[36]
9 PSE is proposing that the remaining 40 percent of total REC proceeds that would
10 be allocated to customers would be used to offset an approved regulatory asset,
11 such as the storm damage regulatory asset associated with the December 2006
12 wind storm.[37]

13 **Q: Would customers realize immediate benefits from REC and CFI sales**
14 **proceeds under PSE's proposal?**

15 A: I cannot determine when the effect of PSE's proposed treatment of REC and CFI
16 sales proceeds would be reflected as an offset to the Company's retail rates since
17 PSE did not present a proposed tariff or other details of its proposed rate credits
18 for such proceeds in its direct testimony. However, the Commission indicated in
19 paragraph 11 of its January 10, 2010 Order Granting Motion to Strike Testimony
20 regarding REC proceeds in Docket Nos. UE-090704/UG-090705, that it expected
21 any final determination in this proceeding could be effective simultaneously with,
22

[36] Amended Petition, page 7.
[37] *Id.*, page 8.

1 or shortly following, the conclusion of the general rate case. Moreover, PSE has
2 acknowledged that it expects the Commission will order that benefits from REC
3 sales proceeds be passed through to customers immediately and that use of a non-
4 general rate tariff would provide such immediate customer benefit.[38] Again, PSE
5 has not proposed such a non-general rate tariff in its testimony in this case.

6 **Q: What is your recommendation regarding the appropriate methods to ensure**
7 **that benefits of REC and CFI sales proceeds are immediately passed through**
8 **to PSE's customers?**

9 A: I recommend that 100 percent of REC and CFI sales proceeds be credited to
10 PSE's ratepayers and reflected in a manner that provides immediate customer
11 benefits to the extent possible. In this regard, I recommend that the $31.3 million
12 of accumulated REC and CFI benefits, plus associated interest, that existed as of
13 the end of November 2009 be immediately applied to offset the approved rate
14 base for PSE's Wild Horse and Hopkins Ridge wind generation facilities, and that
15 this adjustment be reflected in the compliance filing for PSE's approved rates
16 resulting from the Company's pending general rate case.

17 While I do not take a position on the proposal to allocate a portion of
18 revenues to low-income renewable energy and energy efficiency programs, I
19 recommend that, should the Commission approve this allocation, any such
20 funding be made from REC sale proceeds and any CFI proceeds collected after
21 November 2009.

[38] *See* Exhibit No. SN-13, PSE's Response to Public Counsel Data Request No. 42.

1 Finally, I recommend that the remainder of REC and CFI sale proceeds
2 collected each month after November 2009 (subsequent to any allocations to low-
3 income renewable and efficiency programs) be immediately applied to reduce rate
4 base associated with PSE's Wild Horse and Hopkins Ridge wind generation
5 resources, and that the associated reduction in revenue requirements be credited to
6 all PSE retail customers through a non-general rate tariff, similar to the
7 Company's PTC tracker. It is my understanding that PSE does not expect to make
8 CFI sales after November 2009, so future funding may be derived solely from
9 REC sale proceeds.
10 I further recommend that this REC Proceeds Tracker mechanism be
11 implemented as soon as this case is concluded, and that monthly credits used in
12 designing the initial tracker be based on REC revenue forecast provided by PSE
13 in its highly confidential response to Public Counsel Data Request No. 37.[39] I
14 recommend that this REC Proceeds Tracker remain in effect until all future REC
15 sales by PSE have been completed and the associated wind generation rate base
16 credits have been fully reflected in PSE's base rates.
17 **Q: How do you recommend that REC proceeds be allocated among customers**
18 **under your proposed REC Proceeds Tracker?**
19 **A:** I recommend that the REC Proceeds Tracker be designed to allocate REC
20 proceeds among retail customers in the same manner that PSE wind generation
21 costs are currently treated, so that the REC tracker credits are allocated to
22 customers in the same manner that as are wind generation costs. In this way,

[39] *See* Exhibit No. SN-5HC.

customers who pay for PSE's wind generation facilities will receive their fair share of the REC proceeds derived from such wind generation assets.

Q: Why do you recommend that REC and CFI sale proceeds which have been realized through November of 2009 be credited to PSE's base rates instead of through your proposed REC Proceeds Tracker mechanism?

A: As discussed earlier in my testimony, the Commission has indicated a desire to immediately pass through benefits of PSE's REC and CFI sales to customers. However, it is unknown how long it will take following the conclusion of this case for PSE to prepare, file, and obtain approval to implement its initial REC Proceeds Tracker mechanism. My recommendation to credit the REC and CFI proceeds collected through November 2009 to PSE's base rates recognizes that the amounts collected to date are sufficiently known and measurable to be included in PSE's base rates, and is further intended to meet the Commission's stated desire to pass through the credits as soon as reasonably possible. However, if it is not feasible to reflect the REC and CFI proceeds that have already been collected in PSE's base rates due to time limitations or other factors, I recommend that these proceeds from past REC and CFI sales instead be included as credits in PSE's initial REC Proceeds Tracker mechanism.

Q: Do you have other recommendations regarding the regulatory review process that should be used to administer your proposed REC Proceeds Tracker mechanism and to provide oversight of PSE's management and accounting for REC sales in the future?

A: Yes. I recommend that PSE be required to adjust its REC Proceeds Tracker mechanism once every 12 months to reflect forecasted REC proceeds over the next 12-month cycle and to adjust for any differences between the forecasted REC proceeds used in the design of the REC Proceeds Tracker during the previous 12-month period and the actual REC sale proceeds recovered during that same period. As discussed earlier in my testimony, I recommend that PSE's calculations of REC and CFI proceeds be subject to review and final reconciliation in the Company's next general rate case.

Q: Do you have any other recommendations regarding future regulatory treatment of PSE's REC sales?

A: Yes. In light of questions raised in this case regarding PSE's past handling of REC sales, I believe that it would be beneficial for the Commission to increase oversight of PSE activities related to the sale of RECs to ensure that the benefits of such transactions are maximized for customers who are funding the costs of the facilities from which RECs are supplied. A recently approved settlement stipulation in Docket No. UE-090205, PacifiCorp's most recent general rate case, establishes terms for reporting and monitoring of REC sales activities by the utility on an ongoing basis. I recommend that the Commission adopt similar requirements for PSE to ensure that information is available to monitor PSE's REC sales and that customer benefits from such sales are being maximized.

Q: Does that conclude your testimony?

A: Yes.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the 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

BRIEF OF PUBLIC COUNSEL

March 17, 2010

REDACTED VERSION

I. INTRODUCTION

1. Puget Sound Energy, Inc.'s (PSE) Amended Petition requests approval of deferred accounting for the net proceeds of past and future sales of Renewable Energy Credits (RECs) and Carbon Financial Instruments (CFIs).[1] The Company proposes to use $20 million of such proceeds to fund low-income energy efficiency measures and energy-related repairs, and renewable energy systems for low-income residences.[2] PSE also requests that it be allowed to retain $21,062,800 to offset the balance it claims it is owed by California utilities from power sales during the 2000/2001 energy crisis (the "California Receivable").[3] The Company proposes to return the remainder of REC and CFI sales proceeds to electric ratepayers.[4]

2. The Energy Project, Northwest Energy Coalition (NWEC), and Renewable Northwest Project (RNP) filed joint testimony supporting PSE's low-income energy efficiency and renewable projects proposals.[5] However, these parties have not stated a position on the

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[1] Amended Petition, ¶ 1.
[2] *Id.* at ¶ 13.
[3] *Id.* at ¶ 19.
[4] *Id.* The Company initially suggested that proceeds be returned by offsetting regulatory assets that are currently recovered through its base rates, but it has later stated that any of the various methods suggested by Staff, Public Counsel, or ICNU would be acceptable. *See* DeBoer,TR. 110:1-10
[5] Public Counsel takes no position on the low-income energy efficiency and renewable systems proposals. *See* Exh. No. SN-1HCT, pp. 4:15 – 5:2 (Norwood Direct). However, Public Counsel provided the following recommendation:

> [S]hould the Commission approve this proposal, such amounts [should] be derived from net REC proceeds collected after November 2009. . . . [A]ll other REC and CFI sale proceeds and any related energy sales margins collected later than November 2009, after any designated monthly allocation to low-income programs is made, [should] be immediately credited to all PSE retail customers through a non-general rate tariff, similar to the Company's Production Tax Credit (PTC) tracker mechanism.

Additionally, Public Counsel opposes the proposal by ICNU that any amounts allocated to low-income programs be deducted only from residential ratepayers' share of sales proceeds. This proposal should be rejected. All ratepayer classes currently fund low-income programs because the benefits of such programs extend beyond the residential class. *See, e.g.,* Puget Sound Energy Electric Tariff G, Schedules 120 (Electricity Conservation Service Rider) and 129 (Low Income Program). Moreover, residential ratepayers are entitled to the same level of sales proceeds as other classes regardless of whether the Commission allows a portion of these proceeds to be used for low-income programs.

Company's request to retain over $21 million in sales proceeds to offset the California Receivable.[6]

3. Public Counsel has carefully reviewed PSE's proposals and recommends that all REC and CFI sales proceeds be returned to ratepayers. PSE has not demonstrated that the amount it seeks to retain would have otherwise been recoverable, nor has it demonstrated that the price the Company received for RECs sold to California utilities reflected a premium that could not have been obtained without settlement of the California Receivable litigation.[7]

4. It is undisputed that ratepayers will have paid the entire cost of developing the renewable resources from which RECs and CFIs are derived,[8] and are therefore entitled to a full return of the proceeds. Thus, Public Counsel recommends that 100 percent of sales proceeds be returned to retail electric ratepayers with interest. In addition, any profits from the off-system energy sales made under the REC sales contracts with California utilities should be entirely returned to ratepayers.

II. BACKGROUND OF THE CALIFORNIA RECEIVABLE LITIGATION AND REC SALES

5. The facts of this case stretch back over the past decade and involve numerous parties, transactions, and proceedings, as well as various types of resources, assets, and markets. A brief overview of some of these facts follows.

6. RECs are tradable financial instruments that represent the right to claim environmental attributes or benefits associated with energy produced by renewable generation facilities.[9]

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[6] *See* Exh. No. J-1T (Joint Testimony of Eric E. Englert, Sandra M. Sieg, Danielle O. Dixon, Ann E. Gravatt, and Charles M. Eberdt).
[7] *See* Exh. No. SN-1HCT, p. 17:13-21.
[8] *Id.*
[9] Amended Petition, ¶ 4.

Importantly, RECs can be used to demonstrate compliance with renewable portfolio standards.[10] The majority of PSE's RECs are supplied from the Company's ratepayer-funded Wild Horse and Hopkins Ridge wind farms, and Klondike III Wind Power Purchase Agreement (PPA).[11]

7. REC markets are relatively new and in an early stage of development. Markets in various states are presently defined by the laws and regulations of each state.[12] These laws and regulations in turn are "subject to ongoing pressures by affected parties seeking change to such laws and regulations."[13] REC markets can be described as either "compliance" or "voluntary." Compliance markets exist in states with renewable portfolio standards where utilities are mandated to either use renewable generation or purchase RECs to meet such standards. Voluntary markets exist where parties are under no legal or regulatory obligations. Prices are significantly higher in compliance markets. Since 2007, PSE has sold RECs into both compliance and voluntary markets.[14]

8. PSE has received substantial proceeds from REC and CFI sales. From August 2007 through November 2009, PSE sold **[Begin Highly Confidential]** XXXXXXX **[End Highly Confidential]** RECs, earning net proceeds of **[Begin Highly Confidential]** XXXXXXXX.[15]

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[10] Amended Petition, ¶ 8.
[11] *See* Exh. No. SN-1HCT, p. 8:8-10 (Norwood Direct). CFIs are related to PSE's participation in the Chicago Climate Exchange. Members of the Exchange pledged to reduce carbon emissions by one per cent annually. If members met that pledge, they were eligible to trade a commensurate quantity of CFIs banked in the year in which the reductions were achieved. *See* Amended Petition, ¶¶ 8-10. The CFIs referenced in this case were created as a result of PSE reducing the level of carbon emissions on its system from a baseline level established during the 1998 to 2001 period. The reduction in carbon emissions has been accomplished primarily by the Company's acquisition of renewable resources and by the acquisition of gas-fired, combined cycle generating resources that have low carbon emissions. *See* Exh. No. SN-1HCT, p. 8:10-15 (Norwood Direct).
[12] Amended Petition, ¶ 5.
[13] *Id.*
[14] DeBoer, TR. 151:20-24.
[15] *See* Exh. No. SN-4HC, pp. 3-6.

[End Highly Confidential] Through November, 2009, PSE recorded total net proceeds of **[Begin Confidential]** [redacted] **[End Confidential]** from sales of CFIs.[16]

9. PSE will receive **[Begin Highly Confidential]** [redacted]**[End Highly Confidential]** from REC sales going forward. PSE's forecast is summarized as follows:

[Begin Highly Confidential]

TABLE 1 – PSE Forecast of REC Sales[17]

Year	RECs	Revenue
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

[redacted] **[End Highly Confidential]** This forecast includes the sales to California utilities discussed below.[18]

10. According to the Amended Petition and supporting testimony, PSE entered into litigation over eight years ago seeking the recovery of amounts the Company claimed it was owed from California utilities for power PSE sold to California during the 2000/2001 energy crisis.[19] The California utilities included Southern California Edison (SCE), Pacific Gas and Electric (PG&E), and San Diego Gas and Electric (SDG&E). At the time, PSE was under a five-year rate freeze, meaning that all proceeds from the sales to California would flow only to shareholders and not

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[16] *See* Exh. No. SN-4HC, p. 9. **[Begin Confidential]** [redacted] **[End Confidential]** *See* SN-5HC, p. 1.

[17] Exh. No. SN-5HC.

[18] Exh. No. SN-1HCT, p. 7:9-12 (Norwood Direct).

[19] Exh. No. TAD-1T, p. 6:3-10 (DeBoer Direct).

be reflected in rates. Thus, the 2000 and 2001 sales had no bearing on PSE's regulated operations and PSE undertook them knowing that its shareholders would receive the full benefit of such sales. PSE then pursued the litigation to recover monies solely for shareholders. After on-going litigation both at FERC and in the courts, the parties recently reached a settlement that was linked to the sale of RECs. PSE's REC sales to SCE[20] and PG&E[21] were approved by the California Public Utilities Commission (CPUC) in 2009. The California Receivable litigation settlement was also approved by the CPUC and FERC in 2009.[22]

III. REC AND CFI PROCEEDS SHOULD BE RETURNED TO RATEPAYERS

11. The proceeds from PSE's sales of RECs and CFIs should be entirely returned to ratepayers.[23] Commission precedent and principles of equity support the full return of REC and CFI proceeds.

A. Ratepayers Fund the Generating Resources From Which RECs and CFIs are Supplied.

12. Because the Company is recovering the costs of the wind and other renewable generation resources from ratepayers, and will recover all prudently incurred future costs associated with operating these resources, it is ratepayers—not shareholders—who bear the risks and burdens of these resources. Accordingly, it is the ratepayers—not shareholders—who should receive the gain from the resource-generated assets.

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[20] *Id.* at 6:13-15.
[21] Exh. No. DWS-14.
[22] Exh. No. TAD-1T, p. 6:15-16 (DeBoer Direct).
[23] Mr. DeBoer alluded to this at hearing (TR. 133:14-22):

> Q: Do you think it's reasonable for customers . . . to ask the Commission for a fair consideration the REC sales proceeds . . . to help defray the cost of the rate increase that Puget has requested?
>
> A: I do. That's exactly why we filed the accounting petition and why we proposed to give the bulk of the REC revenues back to customers.

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13. The Commission has repeatedly concluded that "the right to gain follows risk of loss and that the benefit of [a] sale should follow those who bore the burdens…."[24] Several courts and commissions have adopted this analysis.[25] Moreover, in *U.S. West v. WUTC*, the Washington Supreme Court held that a regulated utility *cannot fail to return to ratepayers the full value of "a lucrative ratepayer-funded asset."*[26] In its decision, the Court reiterated that, since the lucrative operations at issue had been generated from ratepayer funds, ratepayers were entitled to return of the full value of the operations.[27] This principle is bolstered by the Commission's requirements that companies obtain pre-approval for property sales.[28] The pre-approval process allows the Commission to determine whether the sale is in the public interest and whether the sale price reflects the full value of the assets being sold and will thus create the full benefit to regulated operations and ratepayers.[29]

14. There is no dispute that PSE's ratepayers pay all costs of the generating resources from which RECs and CFIs are derived. This includes the costs of the Hopkins Ridge and Wild Horse wind generation facilities, and the Klondike III PPA, from which a majority of PSE's RECs are

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[24] *In re the Matter of the Application of Avista Corp. for Authority to Sell its Interest in the Coal-Fired Centralia Power Plant, In re the Matter of the Application of PacifiCorp for an Order Approving the Sale of its Interest in (1) the Centralia Steam Electric Generating Plant, (2) the Rate Based Portion of the Centralia Coal Mine, and (3) Related Facilities; for a Determination of the Amount of and the Proper Rate Making Treatment of the Gain Associated with the Sale, and for an EWG Determination; In re the Matter of the Application of Puget Sound Energy for (1) Approval of the Proposed Sale of PSE's Share of the Centralia Power Plant and Associated Transmission Facilities, and (2) Authorization to Amortize Gain over a Five-Year Period*, Docket Nos. UE-991255, UE-991262, and UE-991409, Second Suppl. Order, ¶ 47.

[25] *Id.* (*citing Democratic Central Comm. of the Dist. of Columbia v. Washington Metro. Area Transit Comm'n.*, 458 F.2d 786 (D.C. Cir. 1973) and numerous state commission decisions).

[26] *US West., Inc. v. WUTC,* 134 Wn.2d 74, 96, 949 P.2d 1337 (1997) (emphasis added).

[27] *Id.* at 94-95.

[28] RCW 80.12.020. WAC 480-143-180 further specifies those assets not subject to pre-approval, but provides that under all such circumstances, Companies must seek pre-approval to sell any assets in excess of $200,000 or one percent of the company's rate base.

[29] *See, e.g., In the Matter of the Application of Verizon Northwest, Inc., For Order Regarding Transfer and Sale of Property*, Docket No. UT-071922, Order No. 01 (approving Verizon's petition to sell properties only after Verizon demonstrated that it was receiving full value for the properties and that the sale would facilitate transfer to more efficient systems, add cash to regulated operations, and eliminate various operational costs).

derived.[30] Ratepayers have also paid all costs of the generating resource additions to PSE's system that has resulted in the creation of CFIs.[31] The cost burden on ratepayers for these resources is substantial. The total annual revenue requirement for the Hopkins Ridge, Wild Horse, and Klondike III PPA paid by ratepayers is approximately **[Begin Confidential]** XXX XXXX **[End Confidential]** *per year*.[32]

B. Investors are Fully Compensated for the Risk of Their Capital Investment in Facilities that Supply RECs and CFIs.

15. In his Rebuttal Testimony, Mr. DeBoer asserts that the Company is entitled to retain a portion of REC sales proceeds because the capital costs of wind generation plants are provided "in the first instance by the providers of debt and equity capital."[33] However, Mr. DeBoer's assertion is flawed because it fails to recognize two important points.

16. First, as confirmed by Mr. DeBoer at hearing,"[t]he rates that [PSE has] in effect recover costs related to the wind facilities."[34] Indeed, the investment amounts for the plant are included in PSE's rate base and power supply calculations.[35] This includes approximately $27.3 million per year in equity return to shareholders for the Hopkins Ridge and Wild Horse wind projects.[36] In addition, PSE's rates allow it an opportunity to recover its operating and maintenance costs, property taxes, income taxes, and depreciation associated with the plant.[37] PSE is also protected

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[30] Exh. No. SN-1HCT, p. 9:1-9 (Norwood Direct). The Commission previously found all three of these acquisitions prudent. *See WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-050870, Order No. 04; *WUTC v. Puget Sound Energy, Inc.*, Docket UE-060266 and UG-060267 (consolidated), Order No. 08; and, *WUTC v. Puget Sound Energy, Inc.*, Docket Nos. UE-072300 and UG-072301 (consolidated), Order No. 12 (hereinafter *2007 PSE GRC*).
[31] Exh. No. SN-1HCT, p. 9:7-9 (Norwood Direct).
[32] Ex. No. SN-6C.
[33] Exh. No. TDB-3HCT, p. 4:4-5 (DeBoer Rebuttal).
[34] DeBoer, TR 145:25 – 146:1.
[35] Exh. No. MPP-1HCT, p. 7:1-6 (Parvinen Direct).
[36] Exh. No. SN-7.
[37] Exh. No. MPP-1HCT, p. 7:1-6 (Parvinen Direct); DeBoer, TR. 146:4-9.

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from operating risks because any prudent repair costs may be recovered through rates.[38] While there is no statutory definition of "operating expenses" in Washington, the Commission has the authority to review expenses and, "[i]f properly incurred, [expenses] must be allowed as part of the composition of rates."[39] For instance, if the Company experiences damage to its wind farm equipment, the costs of repairing such damage would be recoverable through rates unless it was shown that they were imprudently incurred, as may be the case if the damage was caused by PSE's own negligence.

17. Second, PSE's investors and owners are *paid* for the risk of their investments.[40] The cost of the wind farms is included in the rate base upon which PSE is allowed the opportunity to earn a rate of return. Currently, PSE is allowed to earn 10.15 percent as its cost of equity, which results, when combined with its allowed cost of debt, in an overall rate of return of 8.25 percent.[41] At hearing, Mr. DeBoer confirmed that the Company's investors and owners are compensated through PSE's rate of return:

> Q: All of the risks inherent in the investment that investors make in PSE are reflected in the cost of capital they provide, correct?
> A: Yes, I think that's true.
> Q: And in setting PSE's rates, the Commission calculates that cost of capital and applies it to the rate base to determine the fair return component of rates, correct?
> A: They provide an opportunity to earn that return, yes.
> Q: And the fair return component of rates is how *investors are compensated for the risks* they undertake in providing their capital to PSE, correct?
> A: *Yes.*[42]

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[38] *See People's Org. for Wash. Energy Resources v. WUTC*, 104 Wn.2d 798, 810, 711 P.2d 319 (Wash. 1985) (*stating*, "[a] utility cannot include every expense it wishes in this operating expense category since the regulatory agency has the power to review operating expenses incurred by a utility and to disallow those which were not prudently incurred") (hereinafter *POWER*).
[39] *See POWER*, 104 Wn.2d at 817 (*quoting* 1 A. Priest, *Public Utility Regulation* 49 (1969)).
[40] DeBoer, TR. 146:4-9 (confirming that PSE's current revenue requirement includes a "reasonable return on shareholders' investment in wind facilities).
[41] *2007 PSE GRC*, Order No. 12, ¶ 51.
[42] DeBoer, TR. 112:13 – 113:1.

C. Precedent Supports the Return of REC and CFI Proceeds to Ratepayers.

18. In 2000, the Commission issued an accounting order requiring PSE to credit sales of excess sulfur dioxide (S02) emission allowances—similar to the CFIs in the current case—to its Other Regulatory Liabilities account, thereby passing proceeds from these sales to ratepayers through base rates.[43] The Commission previously required similar treatment for proceeds of SO2 emission credit sales by PacifiCorp[44] and Washington Water Power.[45] Other state Commissions have similarly required 100 percent of proceeds from such sales to be returned to ratepayers. In approving a proposal by PacifiCorp in 2000, the Wyoming Commission stated, "in its brief... PacifiCorp argues that *all of the benefit from these sales would be returned to customers* under its proposal. We accept this argument and the company proposal."[46]

19. Recent treatment of the proceeds from REC sales in the Northwest reflect the precedent set in regulatory orders regarding proceeds from the sales of SO2 emission credits. In the latest PacifiCorp general rate case, this Commission approved an all-party settlement that recognized an offset to PacifiCorp's revenue requirement representing Washington-allocated REC sales proceeds.[47]

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[43] *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.
[44] *In the Matter of the Petition of PacifiCorp Seeking Blanket Authorization for the Sale of Surplus Sulfur Dioxide Emission Allowances*, Docket No. UE-940466, Commission Decision and Order Granting Authorization
[45] *In the Matter of the Petition of the Washington Water Power Company Seeking Blanket Authorization to Sell and Lease Sulfur Dioxide Emission Allowances and Seeking an Associated Accounting Order*, Docket No. UE-961156, Commission Decision and Order Granting Authorization.
[46] *In The Matter Of The Application Of PacifiCorp For Authority To Increase Their Electric Rates By $12 Million Or 4.9%,* Docket No. 20000-ER-99-145, Commission Order, ¶ 202(b) (filed May 23, 2000), *available at* http://psc.state.wy.us/htdocs/orders/20000-145-6579.htm (last visited March 11, 2010) (emphasis added).
[47] In the most recent PacifiCorp general rate case, the Commission approved a settlement that acknowledged a revenue requirement reflecting well over $.5 million test year REC revenues. *See WUTC v. Pacific Power & Light, d/b/a PacifiCorp*, Docket No. UE-090205, Final Order (Order No. 09), ¶ 38.

The Utah,[48] Wyoming,[49] and Idaho Commissions also require utilities to return the full benefit of REC sales to ratepayers. In 2009, the Idaho Commission ordered Idaho Power Company to sell RECs that the Company wished to retire or bank, and credit the proceeds to ratepayers. In its Order, the Idaho Commission accepted the Industrial Customers' argument that "the value associated with [RECs] *belongs to the ratepayers* and the only appropriate action is to sell the [RECs] and *credit ratepayers with the proceeds.*"[50] The Commission then concluded that "the best use of the [RECs] at issue in this case is to sell them and use the proceeds to benefit Idaho Power ratepayers."[51]

20. This Commission has also required utilities to refund other similar types of revenues to ratepayers. For example, utilities are required to pass back to ratepayers production tax credits (PTC) they receive from the development of certain generation resources. This is done through a tracker mechanism that passes back credits which are based on megawatt hours of wind produced in each period. The PTC tracker mechanism returns 100 percent of the actual tax credits to ratepayers.[52]

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[48] *See In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations, Consisting of a General Rate Increase of Approximately $161.2 Million Per Year, and for Approval of a New Large Load Surcharge*, Docket No. 07.035-93, Report and Order on Revenue Requirement, p. 91 (describing one party's dispute regarding REC proceeds: "UIEC argues the amount of revenue included in the test period from the expected sales of renewable energy credits . . . is too low"). Utah uses a future test year, so REC revenues are forecasted in rates. Thus, while parties disputed the method used to forecast revenues, there was no dispute that 100 percent of forecasted revenues were included in rates and credited to ratepayers.

[49] Exh. No. KCH-1T, p. 8:8-11 (Higgins Direct).

[50] *In the Matter of the Application of Idaho Power Company for Authority to Retire its Green Tags*, Case No. IPC-E-08-24, Order No. 30818, p. 2 (issued May 20, 2009), *available at* http://www.puc.idaho.gov/internet/cases/elec/IPC/IPCE0824/ordnotc/20090520RECONSIDERATION_ORDER_NO_30818.PDF (last visited March 11, 2010) (emphasis added).

[51] *Id.* at p. 4.

[52] *See, e.g.*, PSE's Tariff G, Schedule 95A (Production Tax Credit Tracker).

D. Full Refund of REC and CFI Proceeds Will Help Mitigate the High Cost of Wind Generation Borne by Ratepayers.

21. Importantly, even if they receive 100 percent of REC and CFI sales proceeds as recommended by Public Counsel, PSE's ratepayers will likely still be paying significantly more for electricity than they would otherwise pay if PSE had purchased such energy from the market instead of building wind generation. For example, PSE's current projected cost of energy from Hopkins Ridge, Wild Horse, and the Klondike III PPA is approximately $98 per MWh, which is roughly 115 percent *higher* than PSE's forecasted average market price of energy during this same period.[53] After REC and CFI proceeds are applied, the net cost paid by ratepayers for energy from these resources during the rate year ending March 30, 2011, would be approximately $88 per MWh, which is still roughly *95 percent higher* than PSE's forecasted average price of market energy purchases during the rate year.[54] The additional costs borne by ratepayers due to PSE's wind generation emphasizes the importance of returning all REC proceeds to these ratepayers.

IV. PSE'S PROPOSAL TO RETAIN REC PROCEEDS IS UNJUSTIFIED

A. Standard for Commission Review and Approval of PSE's Request to Retain REC Proceeds.

22. In proceedings before the Commission, the party coming forward—most often the company—bears the burden of proof. As noted by Staff at hearing, "the burden of proof is typically on the company to demonstrate that it's operating in the best interests of customers."[55] Petitions for accounting orders are governed by WAC 480-07-370(1)(b) and can, when they seek

[53] Exh. No. SN-1HCT, p. 10:12-13 (Norwood Direct).
[54] *Id.* at p. 10:17-19.
[55] Parvinen, TR. 204:8-14. The general burden of proof for administrative hearings is by a preponderance of the evidence. Am.Jur. Admin. Law § 357.

only authorization for use of an accounting treatment, be approved absent "a detailed record because there is no inherent risk to ratepayers in doing so."[56] However, it is well-established that when a company seeks to recover costs previously addressed by an accounting order, it bears the full evidentiary burden to show that it has incurred such costs and that it is entitled to recovery.[57]

23. Here, PSE is not only seeking a determination of proper accounting treatment of REC and CFI sales proceeds, but also approval to retain a portion of the proceeds at issue based on claimed ratepayer benefits from REC sales allegedly linked to the settlement of the Company's California Receivable litigation. Thus, PSE "bear[s] the burden to prove that such recovery is proper" through "development of a detailed record."[58]

B. PSE has Not Demonstrated that the $21 Million it Seeks to Retain Would Otherwise be Recoverable.

24. PSE's request to retain $21 million of REC sales proceeds is based, in part, on the Company's position that its litigation claim **[Begin Highly Confidential]** [redacted].[59] [redacted]

25. [redacted]

XXXXXX[60] [redacted]

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[56] *WUTC v. PacifiCorp d/b/a Pacific Power & Light Company*, Docket No. UE-050684, Order No. 04, ¶ 303 (*quoting In re Petition of Puget Sound Energy, Inc., for an Order Authorizing Temporary Deferred Accounting*, Docket No. UE-011600, Order Granting Accounting Petition, ¶ 9).

[57] *Id.*

[58] *Id.*

[59] Exh. No. TAD-3HCT, p. 10:7-11 (DeBoer Rebuttal).

[60] DeBoer, TR. 156:2-3.

[redacted].[61] [redacted]:

> [redacted]. . .[62]

[redacted].[63] [redacted]:

> [redacted].[64]

26. [redacted].[65] [redacted].

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[61] DeBoer, TR. 156:4-6.

[62] DeBoer, TR. 182:24 – 183:11 (emphasis added).

[63] DeBoer, TR. 156:5-6

[64] DeBoer, TR. 167:16-24.

[65] *See* TAD-32, pp. 6-7.

27. [redacted].[66] [redacted][67] [redacted] **[End Highly Confidential]**

C. The REC Sales Prices Were Competitive With REC Sale Price Offers That Were Unrelated to the Settlement.

28. Central to PSE's argument to retain $21 million of REC sales proceeds is the Company's claim that the price it received for REC sales to SCE and PG&E included a premium reflecting the value of the California Receivable settlement. However, there is compelling documentary evidence from regulatory filings in California that the prices PSE charged SCE and PG&E were comparable to prices offered for other REC sales that were unrelated to the settlement. Moreover, the REC price under PSE's contract with PG&E, which was not conditioned upon approval of the settlement, **[Begin Highly Confidential]** [redacted] **[End Highly Confidential]**.[68]

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[66] *See* DeBoer, TR. 176:20-25 and 177:1-2.
[67] DeBoer, TR. 176:18-19.
[68] **[Begin HighlyConfidential]** [redacted]

29. Before SCE could consummate the REC purchase negotiated with PSE, it had to obtain approval for the sale from the CPUC. Accordingly, SCE filed an advice letter with the CPUC describing the sale and laying out its terms.[69] After the settlement, SCE filed a supplement to its advice letter, in which it stated:

> The Puget Contract's pricing *is not dependent on the Settlement Agreement and SCE would have chosen to enter into the Puget Contract independent of the Settlement agreement.* The Puget Contract should be evaluated on its own merits as a market transaction for the purchase of renewable energy, irrespective of the Settlement Agreement.[70]

As summarized by Commissioner Jones at hearing, SCE's advice letter "doesn't really say anything about the settlement other than the deal [it] made [with PSE] wasn't *at all based upon the settlement.*"[71]

30. Pursuant to the filing of SCE's advice letter, the CPUC approved the REC sale. In its Final Resolution, the CPUC concluded that the REC price was reasonable and compared favorably with other offers SCE received:

> SCE provided the Commission with a confidential analysis of how SCE determined its bid price for the Puget auction and what the project's value is relative to its other 2008 offers. SCE's analysis demonstrates that the *Puget contract price is reasonable as compared to its 2008 shortlist.*[72]

[redacted] **[End Highly Confidential]**

[69] Exh. No. DWS-7.

[70] Exh. No. DWS-8, p. 3 (emphasis added).

[71] TR. 169:5-13.

[72] Exh. No. DWS-13, p. 17 (emphasis added).

31. Despite this evidence, PSE asserts that CPUC's participation in the settlement negotiations demonstrates that the CPUC treated the settlement and REC purchases as connected and considered the settlement in its determination that the REC prices were reasonable. This assertion, however, is contradicted by the language of the Settlement Agreement itself:

> The CPUC's approval shall only constitute permission for SCE to consummate this Agreement. The CPUC's consideration and approval of this agreement *shall not in any way affect or limit the CPUC's separate, independent review of the Renewable Power Agreement* pursuant to the standards generally applicable to its review of renewable power agreements and nothing herein shall be viewed as a pre-judgment or pre-determination by the CPUC of the Renewable Power Agreement.[73]

It was confirmed by Mr. DeBoer at hearing that it was an actual term of settlement that the REC sales contract would not be considered in conjunction with the settlement.[74]

32. When pressed at hearing to explain why the CPUC declared that the REC prices were reasonable and not in any way tied to, or dependent upon the settlement, Mr. DeBoer offered only suppositions and vague allegations of political dealings:

> **[Begin Highly Confidential]**[redacted].[75] **[End Highly Confidential]**

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[73] *See* ¶ 9.1.2 of the FERC Settlement, *available at* http://elibrary.ferc.gov:0/idmws/File_list.asp?document_id=13717160 (last visited March 11, 2010) (emphasis added).

[74] DeBoer, TR. 145:10-12.

[75] DeBoer, TR. 170:22 – 171:15.

33. Moreover, as discussed in the direct testimonies of Commission Staff,[76] ICNU,[77] and Public Counsel,[78] PSE has not demonstrated that it received revenues in excess of fair market value for the RECs sold to SCE and PG&E. As Staff witness, Michael P. Parvinen, testified:

> While PSE has stated that the REC sales would not have occurred but for the settlement regarding the power sales, PSE has not shown the REC price[s] exceeded market price[s] in the compliance market, or if so, by how much. . . . Absent that demonstration by PSE, the Commission should not provide PSE a compensated write-off of the California Receivable.[79]

PSE has provided *no* documentary evidence that the REC prices exceed market value or reflect its California Receivable claim. PSE has presented no documentary evidence regarding bids it received from other parties in 2008 and 2009.[80] In addition, none of the "market intelligence" that PSE relies on is documented.[81] The only documentary evidence PSE offered was a **[Begin Highly Confidential]** [redacted].[82] **[End Highly Confidential]** PSE also has not provided information comparing the prices it received to other offers made to SCE and PG&E

As noted by Commissioner Jones in his inquiry regarding the contradictions between PSE's position and publicly filed statements of SCE and CPUC: **[Begin Highly Confidential]** "[redacted] **[End Highly Confidential]**.

[76] Exh. No. MPP-1HCT, p. 17:8-16 (Parvinen Direct).

[77] Exh. No. DWS-1HCT, p. 9:3-6 (Schoenbeck Direct).

[78] Exh. No. SN-1HCT, pp. 13:10 – 14:15 (Norwood Direct).

[79] Exh. No. MPP-1HCT, p. 17:10-16 (Parvinen Direct) (internal citations omitted).

[80] *See* DeBoer, TR.137:8-25. *See also* Exh. No. TAD-13.

[81] DeBoer, TR. 137:25 – 138:9.

[82] DeBoer, TR 138:5-25; Exh. No. TAD-4HC.

through 2008 solicitations, stating that **[Begin Highly Confidential]** [redacted].[83] **[End Highly Confidential]**

D. In Absence of Demonstrated Ratepayer Benefits, There is No Basis for PSE to Recover the California Receivable or REC Sales Proceeds From Ratepayers.

34. Under normal ratemaking practices, PSE would not be entitled to recover costs associated with the California Receivable litigation through Washington retail rates. Mr. DeBoer confirmed during the hearing that the Receivable itself **[Begin Highly Confidential]** [redacted].[84] **[End Highly Confidential]** The California Receivable and litigation relate to non-regulated, speculative wholesale power sales, which PSE pursued in an effort to produce additional profits for shareholders.[85] In addition, at the time of the sales, PSE was entitled to keep *all proceeds* because it was under a five-year rate freeze.[86] Thus, no amounts received in these sales would have *ever* been passed back to ratepayers (or even reflected in a sharing mechanism of any kind). PSE undertook these sales knowing this, and knowing also that only shareholders, not ratepayers, stood to benefit.

35. At hearing, there was some discussion regarding the appropriateness of allowing PSE to retain a portion of its REC sales proceeds as an "incentive" or "reward" for maximizing ratepayer benefits from such sales.[87] As discussed above, the documented evidence indicates that PSE did not receive a premium for its REC sales to California. In fact, the Company has **[Begin Highly Confidential]** [redacted]

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[83] *See* Exh. No. TAD-16; DeBoer, TR. 141:20 – 412:6.
[84] DeBoer, TR. 109:19-25. *See also* Exh. No. SN-1HCT, p. 15 (Norwood Direct).
[85] Moreover, PSE was under no obligation to pursue these market-based, off-system sales. *See* Exh. No. SN-1HCT, p. 15:14-16 (Norwood Direct).
[86] Exh. No. SN-11.
[87] Parvinen, TR. 195:5-22 and 198:12 – 201:14.

[redacted].[88] [redacted],[89] [redacted].[90] **[End Highly Confidential]**

V. RATEMAKING TREATMENT AND CALCULATION OF REC AND CFI PROCEEDS AND RELATED MARGINS

36. PSE's calculations of net proceeds of REC and CFI sales should be reviewed for reasonableness. Interest should be paid on the unrefunded balance of net proceeds collected to date. Any margins realized from the energy component of PSE's bundled REC sales should also be returned to ratepayers in full. Both the net REC and CFI proceeds (with interest) and margins on energy sales should then be credited back to ratepayers in a manner similar to that applied to production tax credits.

A. Calculating Net Proceeds From REC and CFI Sales.

1. Expenses to be netted out of proceeds should be reviewed.

37. PSE proposes to deduct from the total REC and CFI sales revenues costs and credits associated with such sales or required to facilitate such sales. These costs may include:

> [E]xpenses incurred in negotiating the transactions, finalizing the sales agreements and fulfilling the obligations under such agreements, including, but not limited to . . . attorney fees, broker commissions, royalty payments or other third party fees (such as WREGIS-related fees, the Center for Resource Solution fees and audit fees) and the net costs of the energy component of the transaction, if any.[91]

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[88] *See* DeBoer, TR 178:11-13; Exh. No. TAD-14 (stating that all other sales were the product of bilateral negotiations or brokered deals).

[89] *See* RCW 19.285.040.

[90] DeBoer, TR. 179:4-6.

[91] Amended Petition, ¶ 12.

These costs are not insubstantial. To date, PSE has recorded approximately **[Begin Highly Confidential]** XXXXXX **[End Highly Confidential]** in expenses associated with REC and CFI sales made prior to November, 2009.[92]

38. There are two primary concerns regarding PSE's proposed calculation of net proceeds. First, the Company's definition of cost is too vague and could allow it to recover amounts that are "only peripherally related" to REC or CFI sales, or are already recovered through retail base rates.[93] As an example, PSE has not indicated whether internal labor costs, which are currently reflected in its base rates, would be included in its calculation of net proceeds.

39. Second, PSE proposes to include "net costs of the energy component of the transaction" in its calculation of net sales proceeds.[94] These costs represent any difference between the contract price for energy sold and the cost incurred in supplying the energy transaction.[95] However, there is *no apparent relationship* between the cost of energy sold and the contract price of RECs under PSE's sales agreements with the California utilities.[96] Therefore, it is unreasonable to adjust the net REC sales proceeds to reflect any such energy cost differences.

40. In light of these concerns, any costs reflected in PSE's REC and CFI sales proceeds calculations should be subject to review and reconciliation in future PSE general rate cases. In addition, the Commission should require PSE to file regular reports regarding REC sales, revenues, and costs, so that the Commission and interested parties can monitor the level of REC proceeds returned to ratepayers going forward.

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[92] Exh. No. SN-4HC. *See also* Exh. No. SN-1HCT, p. 19, Table 2 (Norwood Direct).
[93] Exh. No. SN-1HCT, p. 20:5-6 (Norwood Direct).
[94] Exh. No. SN-12.
[95] *Id.*
[96] Exh. No. SN-1HCT, p. 20:9-16 (Norwood Direct).

2. Ratepayers should receive interest on un-refunded REC and CFI sales proceed balances.

41. When a utility retains funds before properly returning them to ratepayers, the Commission requires that the utility include interest in the amounts returned to reflect the time-value of such funds.[97] Accordingly, interest is proper in this case because PSE should have declared the revenue from its REC and CFI sales at the time they were realized.[98] In this case, PSE received revenues for REC and CFI sales beginning in August, 2007.[99] In all, PSE has possessed for some time approximately **[Begin Highly Confidential]** XXXXXXX **[End Highly Confidential]** that must be returned to ratepayers.[100] However, PSE chose not to seek Commission approval for the numerous sales prior to, or at the time, the sales were entered. Moreover, PSE chose not to declare the REC and CFI sales revenues that it possessed in its general rate case filed in May, 2009.[101] Ratepayers are thus entitled to all commensurate interest on all proceeds received by PSE to-date.

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[97] *See, e.g., WUTC v. American Water Resources, Inc.,* Docket Nos. UW-031284, UW-010961, and UW-031596, Order No. 9 (requiring the company to return to ratepayers money it held in account for 21 months with interest compounded monthly).

[98] It is also arguable that PSE should have sought Commission approval *prior* to entering into these sales per RCW 80.12 and WAC 480-143-180. This has been Commission practice for SO2 emission credits, *i.e.* a similar financial instrument, *even where* the generating utility has determined that the credits are excess. *See supra* Section III.C. The Commission has also declared that approval *prior to* sale is integral to its regulatory oversight. *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-010526, Order Denying Application for Mitigation of Penalties, ¶ 7 (*stating*, "[a]pproval sought after the transaction is effectively consummated defeats the purpose of this law and the Commission's rule").

[99] *See* Exh. No. SN-4HC, p. 3.

[100] *See* Exh. No. SN-4HC. **[Begin Highly Confidential]** XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. **[End Highly Confidential]** *See* TR. 151:20 – 152:19.

[101] *WUTC v. Puget Sound Energy, Inc.*, Docket Nos. UE-090704 and UG-090705 (consolidated).

B. Any Margins Realized From Off-System Energy Sales Under PSE's Bundled REC Sales Contracts Should Be Returned to Ratepayers.

42. A number of PSE's REC sales contracts are for bundled sales including both energy and RECs. Under these bundled sales contracts, the price of energy charged by PSE **[Begin Highly Confidential]** [redacted].[102] [redacted].[103] **[End Highly Confidential]**

43. It is important to note that PSE did not reflect the off-system energy sales associated with the REC sales agreements in the proposed baseline power cost forecast in the Company's pending general rate case.[104] As a result, any profits from these sales would flow to the Company and its investors, rather than to ratepayers who pay all non-fuel costs of the generating resources from which such energy would be supplied, unless the energy margins from these REC sales transactions are reflected in PSE's baseline power forecast or otherwise refunded to ratepayers.

Returning these profits is proper given that ratepayers have funded the generating resources from which they will be derived.[105] It is also consistent with this Commission's normal treatment of all such off-system sales.[106] In addition, PSE has acknowledged that

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[102] Exh. No. TAD-21HC.
[103] Exh. No. SN-1HCT, p. 16:8-19 (Norwood Direct).
[104] *Id.* at p. 19:6-8.
[105] *See supra* Section III.A.
[106] *See* Exh. No. SN-1HCT, p. 17:1-2 (Norwood Direct).

returning these proceeds to ratepayers **[Begin Highly Confidential]** [redacted]:

> [redacted].[107] **[End Highly Confidential]**

C. Costs of Pursuing the California Receivable Litigation.

44. PSE has spent considerable sums throughout the nearly decade-long course of the California Receivable litigation. As confirmed at hearing, the **[Begin Highly Confidential]** [redacted].[108] **[End Highly Confidential]** The California Receivable litigation, however, falls outside of PSE's regulated activities; neither any recovery nor any losses incurred as a result of the litigation would have ever been passed on to ratepayers.[109] These costs, therefore, should not be imposed on ratepayers because they were costs devoted entirely to non-regulated activities with no potential benefit to ratepayers.

45. It appears that PSE has already collected from ratepayers the **[Begin Highly Confidential]** [redacted][110] [redacted]:

> [redacted].

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[107] DeBoer, TR. 148:21 – 149:2.
[108] DeBoer, TR. 154:17 – 155:15.
[109] *See supra* Section II.
[110] DeBoer, TR. 183:21-24.

[redacted].[111] **[End Highly Confidential]**

Public Counsel finds PSE's recovery of these litigation costs troubling. Public Counsel understands that PSE's prior rates have been approved by this Commission, but it is not clear at this point whether this aspect of PSE's legal costs was reviewed in earlier proceedings. Moreover, given that the record of the current rate case is closed, there is not an opportunity to examine the issue in that docket.[112] Thus, a challenge to these costs would presumably require a complaint proceeding initiated by a party or upon the Commission's own motion.[113] The prospective recovery of these costs may also be a proper subject of scrutiny in subsequent rate proceedings.

D. Accumulated REC and CFI Sales Proceeds Should Be Immediately Credited to Ratepayers.

46. A portion of proceeds from REC and CFI sales should be immediately credited to ratepayers. As the Commission indicated in its order granting a motion to strike testimony

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[111] DeBoer, TR. 184:1-19.

[112] *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-090704 and UG-090705 (consolidated).

[113] The governing statutes and Commission's rules allow for scrutiny of costs included in previously-approved rates, including potential returns to ratepayers of improperly recovered costs and penalties. *See* RCW 80.04.220, which provides:

> When complaint has been made to the commission concerning the reasonableness of any rate, toll, rental or charge for any service performed by any public service company, and the same has been investigated by the commission, and the commission has determined that the public service company has charged an excessive or exorbitant amount for such service, and the commission has determined that any party complainant is entitled to an award of damages, the commission shall order that the public service company pay to the complainant the excess amount found to have been charged, whether such excess amount was charged and collected before or after the filing of said complaint, with interest from the date of the collection of said excess amount.

See also WAC 480-07-370(a) (governing formal complaints).

regarding such proceeds in PSE's current general rate case, it expected that any final determination in *this proceeding* could be effective simultaneously with, or shortly following, the conclusion of the general rate case.[114] Moreover, PSE has acknowledged that it expects the Commission to order that REC proceeds be passed through to ratepayers immediately and that use of a non-general rate tariff could achieve this.[115]

47. As of November, 2009, PSE had accumulated approximately **[Begin Highly Confidential]** XXXXXXX **[End Highly Confidential]** in proceeds from REC and CFI sales.[116] Since these amounts have been realized, they should be immediately credited back to ratepayers with interest. As recommended by Public Counsel witness, Scott Norwood, this amount should be "applied to offset the approve rate base for PSE's Wild Horse and Hopkins Ridge wind generation facilities."[117] To ensure that ratepayers receive this credit immediately, the adjustment should be reflected in the compliance filing for PSE's rates as approved in its pending general rate case.[118]

E. Future REC Proceeds Should Be Returned to Ratepayers Through a Tracker Mechanism.

48. The most appropriate method for returning future REC proceeds to ratepayers is through a mechanism similar to that used for production tax credits (PTC) arising from wind generation.[119] Using a tracker mechanism is appropriate given the similarities between PTC and

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[114] *See* Order Granting Motion to Strike Testimony, Docket Nos. UE-090704 and UG-090705 (consolidated), ¶ 11. It is also noteworthy that PSE advocated for a very expedited schedule for this case, including only 15 days for hearing preparation and nine days for preparation of post-hearing briefs, on the grounds that ratepayers should begin receiving the benefits of REC and CFI sales proceeds as soon as possible. *See* Strom Carson, TR. 11:23 – 12:5 and 25:2-10.
[115] Exh. No. SN-13.
[116] *See* Exh. No. SN-4HC and Highly Confidential Errata Sheet to SN-1HCT (filed March 9, 2010).
[117] Exh. No. SN-1HCT, p. 22:6-16 (Norwood Direct).
[118] This is what PSE proposed in advocating for an expedited schedule in this docket. Strom Carson, TR. 12:2-5.
[119] Exh. No. SN-1HCT, p. 23:1-9 (Norwood Direct).

REC proceeds. RECs, like PTCs, are valued based on the output of wind generation facilities, but are not fuel or energy related revenues.[120] Instead, they reflect the intrinsic value of the wind generation (or other renewable) resource. In addition, the values of both are contingent on laws and regulations.[121] Whether or not the value of RECs (or PTCs) was considered in the PSE's economic studies in support of the decision to acquire or own wind resources, these values are derived from the asset and should be returned to ratepayers.

49. The REC tracker mechanism should be adjusted once every 12 months to reflect forecasted REC sales proceeds over the next 12-month cycle.[122] This adjustment should also reflect any differences between the forecasted proceeds used in the design of the tracker mechanism during the previous 12-month period and the actual proceeds recovered during that same period.

50. Kroger has also proposed the use of a tracking account. However, Kroger proposed that proceeds be allocated "on a flat kilowatt-hour basis to all PSE retail generation customers."[123] This allocation is not appropriate and should be rejected. Allocating proceeds on a flat kilowatt-hour basis could result in high-use ratepayers receiving proceeds in excess of their cost responsibility for the wind generation resources.

F. An Incentive for PSE to Maximize REC Sales Proceeds is Inappropriate for Current Sales and Unnecessary for Future Transactions.

51. At hearing, the idea of incenting PSE to pursue valuable REC sales was discussed. Specifically, it was suggested that, perhaps, PSE should be allowed to retain a portion of REC

[120] *See* TR. 180:2-5 (DeBoer testifying that the value of REC is "not related so much to weather like energy or season, it's more related to RPS compliance in various states"). *See also* DeBoer, TR 181:3-15 (describing how the value of RECs in compliance markets are shaped by state laws and regulation).
[121] *See* DeBoer, TR 181:3-15 (describing how the value of RECs in compliance markets are shaped by state laws and regulations).
[122] Exh. No. SN-1HCT, p. 25:1-8 (Norwood Direct).
[123] Exh. No. KCH-1T, p. 10:19-22 (Higgins Direct).

proceeds even when such sales do not include a premium as the Company claims here.[124] Incentives are inapplicable to the sales at issue presently. Since these sales have already occurred and are finalized, creating an incentive is now moot. Moreover, absent the Amended Petition, these REC sales proceeds would have been passed back in full to ratepayers as a credit to the Company's "Other Electric Revenues" account.[125]

52. In addition, incentives are not necessary for any future sales. It is likely that the amount of RECs PSE has available for sale going forward **[Begin Highly Confidential]** XXXXX XXXXXX.[126] **[End Highly Confidential]** Furthermore, PSE has a legal obligation to provide least-cost service to ratepayers, which may include obtaining maximum value for excess RECs to offset what it must recover through rates.[127] Finally, the ratemaking process provides a built-in incentive for PSE to reduce its costs below those set by the Commission because PSE retains any cost savings.

53. If, however, the Commission chooses to develop an incentive mechanism for future sales, the Power Cost Adjustment Mechanism (PCA) offers a potential model. PSE's current PCA allows the Company to retain off-system energy sales (OSS) proceeds *in excess* of what are reasonably forecasted. This is appropriate here because, as confirmed at hearing by Staff, a company "should [not] be rewarded . . . for making a sale at market."[128] This was just the approach that the Idaho Commission took last year, when it ordered Idaho Power to record all

[124] DeBoer, TR.194: 7-25 and 195:1-4.
[125] Exh. No. TAD-28.
[126] *See* SN-4HC; DeBoer, TR. 179:4-6.
[127] *See* WAC 480-100-238 (governing integrated resource plans).
[128] Parvinen, TR. 204:12-14.

proceeds from the sale of RECs "in the Company's 2010 Power Cost Adjustment (PCA) filing."[129]

VI. REVIEW AND REPORTING ON FUTURE SALES

54. The record in this case illustrates how uncertain the REC market is and raises questions regarding PSE's REC sales practices. At hearing, Mr. DeBoer reiterated that the market is illiquid and that there is a lack of transparency in REC pricing and transactions.[130] In addition, Mr. DeBoer described PSE's REC sales practices, noting that sales are made through individually brokered deals,[131] meaning that there is little consistency or ability to oversee such transactions. Accordingly, the Commission, as well as other parties, would benefit from increased Commission oversight of PSE's activities related to the sale of RECs. Oversight would allow the Commission and other parties to identify critical problems or issues.[132] Such oversight would also help ensure that the substantial proceeds from such transactions are maximized for ratepayers who are funding the costs of the facilities from which RECs are supplied.

55. A settlement recently approved in PacifiCorp's 2009 general rate case established terms for reporting and monitoring of REC sales activities on an ongoing basis.[133] The Commission should adopt similar requirements for PSE here. Despite PSE's assertions to the contrary,[134] the bulk of the reporting requirements established in the PacifiCorp settlement are relevant to, and

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[129] *In the Matter of the Application of Idaho Power Company for Authority to Retire Its Green Tags*, Case No. IPC-E-08-24, Order No. 30818, p. 1 (issued May 20, 2009).
[130] *See* DeBoer, TR. 126:17-21 and 142:1-6.
[131] DeBoer, TR. 178:7-13. *See also* Exh. No. TAD-14.
[132] In his Rebuttal Testimony, Mr. DeBoer asserts that reporting is unnecessary because Public Counsel has not "articulate[d] any actual issues with PSE's treatment of RECs." *See* Exh. No. TAD-3HCT, p. 20:18-19. However, it is precisely the lack of information (and previous reporting) that prevents Public Counsel from articulating specific issues at this time.
[133] *WUTC v. PacifiCorp d/b/a Pacific Power & Light Company*, Docket No. UE-090205, Final Order Approving And Adopting Settlement Stipulation (Order No. 09), ¶¶ 37-42 (hereinafter *PacifiCorp GRC*).
[134] *See* Exh. No. TAD-3HCT, p. 21:10-15 (DeBoer Rebuttal).

appropriate for PSE.[135] The relevant reporting requirements include: (1) an explanation of how the Company determines proper disposition of RECs; (2) a detailed accounting of RECs sold versus retained; (3) monthly REC generation by resource; (4) actual level of REC transactions on a MWh basis; and, (5) the actual level of REC-related revenues.[136] These types of reports would provide valuable information regarding PSE's REC activities regardless of the fact that PSE is a single-state utility.

VII. CONCLUSION

56. PSE's ratepayers bear the entire cost of developing the renewable resources from which RECs and CFIs are derived, and are therefore entitled to a full return of the sales proceeds. PSE has failed to show that it is entitled to retain any portion of these proceeds. Thus, Public Counsel recommends that the Commission order PSE to return 100 percent of sales to ratepayers, including interest on the current balance. In addition, any profits from the off-system energy sales made under the REC sales contracts should be returned entirely to ratepayers. Finally,

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[135] Any reporting related to multi-state allocations would be irrelevant for PSE and thus need not be included.
[136] *PacifiCorp GRC,* Settlement Stipulation, ¶¶ 20-21 and Appendix C.

Public Counsel recommends that the Commission require PSE to file regular reports regarding REC generation and disposition.

DATED this 17th day of March, 2010.

ROBERT M. McKENNA
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EXHIBIT NO. ____(KCH-1T)
DOCKET NO. UE-070725
WITNESS: KEVIN C. HIGGINS

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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**

PREFILED RESPONSE TESTIMONY AND (NON-CONFIDENTIAL) EXHIBITS OF KEVIN C. HIGGINS ON BEHALF OF THE KROGER CO.

January 28, 2010

1 **Table of Contents**

1 **RESPONSE TESTIMONY OF KEVIN C. HIGGINS**

2

3 **Introduction**

4 **Q. Please state your name and business address.**

5 A. Kevin C. Higgins, 215 South State Street, Suite 200, Salt Lake City, Utah,
6 84111.

7 **Q. By whom are you employed and in what capacity?**

8 A. I am a Principal in the firm of Energy Strategies, LLC. Energy Strategies
9 is a private consulting firm specializing in economic and policy analysis
10 applicable to energy production, transportation, and consumption.

11 **Q. On whose behalf are you testifying in this proceeding?**

12 A. My testimony is being sponsored by The Kroger Co. ("Kroger") on behalf
13 of its Fred Meyer Stores and Quality Food Centers divisions. Kroger is one of the
14 largest retail grocers in the United States, and operates approximately 150
15 facilities in the state of Washington, approximately 70 of which are located in the
16 territory served by Puget Sound Energy ("PSE"). These facilities purchase more
17 than 165 million kWh annually from PSE, and are served on Electric Rate
18 Schedules 24, 25, 26, and 40.

19 **Q. Please describe your professional experience and qualifications.**

20 A. My academic background is in economics, and I have completed all
21 coursework and field examinations toward the Ph.D. in Economics at the
22 University of Utah. In addition, I have served on the adjunct faculties of both the
23 University of Utah and Westminster College, where I taught undergraduate and

1 graduate courses in economics. I joined Energy Strategies in 1995, where I assist
2 private and public sector clients in the areas of energy-related economic and
3 policy analysis, including evaluation of electric and gas utility rate matters.
4 Prior to joining Energy Strategies, I held policy positions in state and local
5 government. From 1983 to 1990, I was economist, then assistant director, for the
6 Utah Energy Office, where I helped develop and implement state energy policy.
7 From 1991 to 1994, I was chief of staff to the chairman of the Salt Lake County
8 Commission, where I was responsible for development and implementation of a
9 broad spectrum of public policy at the local government level.
10 **Q. Have you previously testified before this Commission?**
11 A. Yes. I testified in the PSE 2009, 2007, 2006 and 2004 general rate cases
12 and participated in the settlement discussions that resulted in partial settlement
13 agreements pertaining to rate spread and rate design issues in those proceedings. I
14 also testified in the interim phase of the PSE 2001 general rate case and
15 participated in the collaborative process that led to the settlement agreement
16 submitted by the parties to that general rate proceeding, which was subsequently
17 approved by the Commission.
18 **Q. Have you testified before utility regulatory commissions in other states?**
19 A. Yes. I have testified in approximately one hundred twenty proceedings on
20 the subjects of utility rates and regulatory policy before state utility regulators in
21 Alaska, Arizona, Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Kansas,
22 Kentucky, Michigan, Minnesota, Missouri, Montana, Nevada, New Mexico, New

1 York, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Utah, Virginia,
2 West Virginia, and Wyoming.
3 A more detailed description of my qualifications is contained in
4 Attachment A, appended to my response testimony.
5
6 **Overview and Recommendations**
7 **Q. What is the purpose of your testimony in this proceeding?**
8 A. My testimony addresses the joint proposal by PSE, the NW Energy
9 Coalition, the Renewable Northwest Project, and The Energy Project
10 (collectively, "Settling Parties") regarding the treatment of revenues from the sale
11 of Renewable Energy Credits ("RECs") and Carbon Financial Instruments
12 ("CFIs").
13 **Q. Please summarize your conclusions and recommendations.**
14 The proposal from the Settling Parties to allocate the proceeds from REC
15 sales fails to give adequate priority to the crediting of REC sales to PSE's
16 customers, who provide the underlying cost recovery for the assets that make the
17 REC sales possible.
18 As a threshold matter, it is appropriate for 100 percent of the proceeds
19 from REC sales to be credited to customers. At the same time, I believe there is
20 room for Commission discretion regarding the crediting of REC sales to the
21 special purposes proposed by the Settling Parties.
22 Specifically, I recommend adopting a mechanism that would place the
23 share of REC revenues accruing to customers in a REC Revenue Tracking

1 Account ("RRTA") that would be paid out to customers monthly through an
2 RRTA Sur-Credit on customers' bills. The initial amount placed in the RRTA
3 should be no less than 80 percent of the REC revenues that have accrued as of the
4 effective date of the Commission's order in this docket. Going-forward, at least
5 80 percent of each month's new REC revenues should also be booked to the
6 RRTA.

7 For accounting purposes, the RRTA should be treated as a regulatory
8 liability that is amortized on a three-year rolling basis and accrues interest at
9 PSE's authorized after-tax rate-of-return (including equity). Because the benefit
10 of REC sales is attributable to PSE's generation assets, the RRTA Sur-Credit
11 should be applied to the bills of PSE's generation customers, rather than credited
12 against the storm damage regulatory asset as proposed by PSE.

13

14 **Proceeds from Sales of RECs and CFIs**

15 **Q. Please describe the proposal by PSE and other Settling Parties regarding the**
16 **disposition of proceeds from sales of RECs and CFIs.**

17 A. In its filing, PSE states that it has negotiated various transactions for the
18 sales of RECs that will significantly increase the funds that PSE will receive over
19 the next few years. PSE and the other Settling parties are proposing to apportion
20 the proceeds from these sales in the following manner:

21 (1) PSE would receive 40% of the REC sales proceeds, not to exceed
22 $21,062,800, to offset a portion of a receivable carried on PSE's books for a
23 disputed energy sale to California parties dating back to 2001;

1 (2) Renewable energy and energy efficiency programs targeting low-
2 income households would receive 100% of proceeds from sales of RECs and CFIs
3 already booked at the time of the filing in this docket (approximately $10 million)
4 plus up to 20% of the proceeds from new REC sales, not to exceed $20 million in
5 total; and
6 (3) The remaining balance would be applied as a credit to customers
7 against the regulatory asset currently being carried by PSE for recovery of storm
8 damage costs.
9 **Q. What is your assessment of this proposal?**
10 A. The sale of RECs and CFIs is a very positive development for PSE and its
11 customers. However, the proposal from the Settling Parties fails to give adequate
12 priority to the crediting of REC[1] sales to PSE's customers, who provide the
13 underlying cost recovery for the assets that make the REC sales possible.
14 Moreover, PSE customers currently face the prospect of a rate increase pursuant
15 to the Company's general rate case proceeding, which is currently under
16 consideration in Docket No. UE-090704; the reasonable likelihood of a general
17 rate increase makes consideration of rate relief to customers all the more timely.
18 The first priority in allocating the proceeds from REC sales should be the
19 recognition of revenue credits to customers. The proposal of the Settling Parties
20 fails to recognize this priority, but rather, it is a vehicle for mutual endorsement of
21 special treatment for the constituencies of the Settling Parties. The interest of
22 customers as a whole is not given appropriate weight in the proposal.

[1] For ease of exposition, I will refer to REC and CFI sales jointly as "REC sales" unless otherwise

1 **Q. What do you recommend?**

2 A. As a threshold matter, it is appropriate for 100 percent of the net proceeds
3 from REC sales to be credited to customers. REC sales occur from rate-based
4 assets, the costs of which are recovered from customers. In this sense they are
5 comparable to off-system sales margins and wheeling revenues. The proper
6 ratemaking treatment from such sales is to recognize the benefits of these sales as
7 a credit against the rates paid by customers.

8 **Q. Are you familiar with the ratemaking treatment of REC sales in other**
9 **jurisdictions?**

10 A. Yes. In Utah and Wyoming, 100% of the benefit of PacifiCorp's
11 projected test period REC sales is credited to ratepayers.

12 **Q. Are you firmly opposed to any crediting of REC sales to the special purposes**
13 **proposed by the Settling Parties?**

14 A. No. I believe there is room for Commission discretion in this regard;
15 however, the prioritization and timing should be modified to give more weight to
16 rate relief to customers as a whole.

17 **Q. Please explain.**

18 I will begin with the proposal to credit a portion of REC revenues to PSE
19 to offset its 2001 receivable. Although there is a strong argument that 100% of
20 the proceeds from such a sale should accrue to customers, there are certain
21 ratemaking situations in which some portion of off-system sales margins, e.g.,
22 10%, are retained by a utility as an incentive (or reward) for pursuing such sales

indicated. In addition, my references to "REC revenues" are intended to refer to REC proceeds net of prudent sales expense.

1 opportunities. It can be argued that in executing a REC sales strategy, PSE acted
2 in its stakeholders' best interest and is deserving of some revenue recognition. If
3 the Commission is persuaded by such an argument, then some set aside for PSE
4 may be appropriate. However, rather than setting aside 40% of REC revenues for
5 PSE as proposed by the Settling Parties, I recommend that no more than 10% of
6 annual REC revenues be reserved for PSE. I further recommend that this
7 crediting cease when the $21,062,800 requested by PSE, or any lesser amount
8 otherwise approved by the Commission, is accrued.

9 **Q. Under your proposed treatment, should any carrying charges be earned by**
10 **PSE on the unrecovered balance applicable to its receivable?**

11 A. No. Carrying charges would not be appropriate. Customers do not owe
12 payment to PSE for the receivable; it is owed by California parties. If it takes
13 some time for the receivable to be retired, that is not a burden imposed by
14 customers.

15 **Q. If the Commission approves special funding from REC sales for low-income**
16 **programs, how should this funding be structured?**

17 A. If the Commission approves special funding from REC sales for low-
18 income programs, the prioritization of such funding should be appropriately
19 balanced with the need to recognize revenue credits for customers as a whole.
20 Specifically, I recommend that no more than 10% of REC sales annual revenue –
21 including revenues from past sales – be set aside for special program funding.
22 When the cumulative program funding reaches the $20 million recommended by

1 the Settling Parties, or some lesser amount approved by the Commission, this
2 special earmarking of REC revenues for low-income programs would end.
3 Taken in combination with my recommended treatment of any revenues
4 apportioned by PSE, this approach would ensure that at least 80 percent of
5 previously-collected and future REC revenues would inure to the benefit of
6 customers as a whole.
7 I note that the Settling Parties seem to anticipate that funds earmarked for
8 low income programs would be spread out over seven years.[2] Thus, even in the
9 context of the Settling Parties' own proposal, it is not reasonable to front-end load
10 the funding of these programs by reserving 100% of previously-collected REC
11 revenues for special program purposes to the exclusion of rate relief to customers
12 as a whole.
13 **Q. How should REC revenues be passed through to customers?**
14 A. I recommend adopting a mechanism that would place the share of REC
15 revenues accruing to customers in a REC Revenue Tracking Account ("RRTA")
16 that would be paid out to customers monthly through an RRTA Sur-Credit on
17 customers' bills. The initial amount placed in the RRTA should be no less than
18 80 percent of the REC revenues that have accrued as of the effective date of the
19 Commission's order in this docket. Going-forward, at least 80 percent of each
20 month's new REC revenues should be booked to the RRTA.
21 For accounting purposes, the RRTA should be treated as a regulatory
22 liability that is amortized over a reasonable period, taking into account the

[2] PSE Response to Public Counsel 005.

1 expectation that REC revenues are likely to accrue over a period of years, but may
2 not be permanent. The amortization period should balance the need for speedy
3 recognition of the REC benefit in customer rates with the desirability of rate
4 stability. I suggest a rolling three-year amortization for this purpose. By "rolling
5 three-year amortization" I mean that each new year's accrual of REC revenues
6 would amortize over three years.

7 Because the RRTA would be booked as a regulatory liability, it would
8 typically be treated as a deduction from rate base. However, because rate base is
9 being independently determined in the general rate case proceeding, the results of
10 which may not be reconciled with the decision in this docket, it may be more
11 practical for interest accrual on the regulatory liability to be determined on a
12 standalone basis.

13 **Q. Why should the RRTA accrue interest?**

14 A. Prior to being distributed to customers, the share of the RRTA funds
15 apportioned to customers represents capital that is available to PSE for corporate
16 purposes. For this reason, regulatory liabilities (such as the proposed RRTA) are
17 typically deducted from rate base. When a regulatory liability is deducted from
18 rate base, customers effectively earn a return on the regulatory liability equal to
19 the utility's after-tax rate-of-return. In lieu of deducting the RRTA from rate
20 base, the RRTA balance should earn interest equal to PSE's authorized after-tax
21 rate-of-return (including equity).

22 **Q. How should the RRTA Sur-Credit be calculated?**

A. In the initial year, the RRTA Sur-Credit should be established at a level that amortizes one-third of the RRTA balance that is placed into the account on Day 1, as well as one-third of the amount projected to be booked into the RRTA for the upcoming year ("Vintage 1"). The RRTA Sur-Credit would be reset each year. In the second year, the RRTA Sur-Credit should be established at a level that amortizes the second year of the Day 1 and Vintage 1 RRTA funds, plus one-third of the amount projected to be booked into the RRTA for the upcoming year ("Vintage 2"). In addition, the RRTA Sur-Credit would be adjusted to reflect interest accruals on monthly balances, as well as true-up any over or under-collections or mis-projections of revenues from the prior year. The RRTA Sur-Credit for subsequent years would be structured similarly to the second year. If, in the future, REC sales (or their equivalent) were to cease, the RRTA Sur-Credit would gravitate to zero as the last of the amortizations rolls off.

Q. What rate design should be applied to the RRTA Sur-Credit?

A. Because the benefit of REC sales is attributable to PSE's generation assets, the RRTA Sur-Credit should be applied to the bills of PSE's generation customers. Ideally, this revenue credit would be allocated in accordance with each customer class's allocated cost responsibility for PSE's generation plant. However, in the current general rate case, rate spread was resolved by stipulation with no concurrence on cost-of-service methodology. Consequently, it may be more practical to allocate the RRTA Sur-Credit on a flat kilowatt-hour basis to all PSE retail generation customers.

1 **Q. Have you prepared an exhibit demonstrating how your proposed rolling**
2 **three-year amortization proposal would work?**
3 A. Yes. I have prepared such an exhibit. To best reflect the situation at hand,
4 the exhibit incorporates PSE's previously-collected and projected REC revenues,
5 which are classified as Highly Confidential. The illustrative example of my
6 rolling three-year amortization proposal, including example RRTA Sur-Credit
7 rates for the first three years, is presented in Exhibit No.__(KCH-2HC). For
8 illustrative purposes, the calculation assumes that 10% of REC proceeds are
9 earmarked for PSE up to $21,062,800, and 10% are earmarked for low-income
10 programs up to $20,000,000.
11 **Q. Do the results in Highly Confidential Exhibit No.__(KCH-2) represent your**
12 **proposal for a specific RRTA Sur-Credit at this time?**
13 A. No. The results in Highly Confidential Exhibit No.__(KCH-2) are
14 presented as a illustration of how the rolling three-year amortization would work,
15 given the projected REC sales at this time. If the Commission approves this
16 approach, I would expect that actual RRTA Sur-Credit rates would be calculated
17 by PSE in a compliance filing.
18 **Q. PSE has proposed that the proceeds credited to customers be applied to the**
19 **regulatory asset booked for recovery of storm damage costs. What is your**
20 **assessment of this proposal?**
21 A. Application of this credit to the storm damage regulatory asset is not
22 appropriate for several reasons. First, storm damage costs more closely
23 correspond to the costs of Company's power delivery system, whereas REC sales

are attributable to PSE's generation assets. Moreover, the storm damage regulatory asset is included in rate base as part of PSE's working capital, which is computed using the balance sheet method. In accordance with this method, if, as part of a general rate proceeding, the storm damage regulatory asset is offset using REC proceeds, the revenue requirement would be reduced for both the electric and gas utilities; thus, this approach would transfer part of the benefit of REC sales to PSE's gas rates, creating a mismatch between costs incurred and benefits received. To avoid such mismatches, the RRTA Sur-Credit should be designed to apply only to PSE's retail generation customers.

A second reason to set up a separate tracking mechanism for the RRTA is timing: the storm damage regulatory asset is scheduled to be amortized over a ten year period, whereas a shorter, rolling three-year amortization period for the REC revenues is more appropriate. Tying recognition of the REC proceeds in rates to the storm damage regulatory asset would unduly delay the pass-through of REC revenues to customers.

And thirdly, it is my understanding that using REC proceeds to offset a regulatory asset in rate base would require coordination with the general rate case. It is also my understanding that the extant docket and the general rate case docket are on separate tracks. Therefore, as a practical matter, it appears that it is necessary to establish a separate tracking and sur-credit mechanism outside the general rate case if the benefits of REC sales are to be passed through to retail customers in a timely manner. My proposal to establish an RRTA would accomplish this objective.

1 **Q. Does this conclude your response testimony?**

2 A. Yes, it does.

EXHIBIT NO. ____(KCH-2HC)
DOCKET NO. UE-070725
WITNESS: KEVIN C. HIGGINS

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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**

FIRST EXHIBIT (HIGHLY CONFIDENTIAL) TO THE
PREFILED RESPONSE TESTIMONY OF
KEVIN C. HIGGINS
ON BEHALF OF THE KROGER CO.

HIGHLY CONFIDENTIAL
PER PROTECTIVE ORDER IN
DOCKET NO. UE-070725

(REDACTED)

January 28, 2010

Kroger Illustrative Example of REC Revenue Tracker Account Sur-Credit Calculation with Rolling Three-Year Amortization

Sur-Credit Summary

Ln. No.		Yr 1 Jul. 1, 2010 - Jun. 30, 2011 (Mills/kWh)	Yr 2 Jul. 1, 2011 - Jun. 30, 2012 (Mills/kWh)	Yr 3 Jul. 1, 2012 - Jun. 30, 2013 (Mills/kWh)	Yr 4 Jul. 1, 2013 - Jun. 30, 2014 (Mills/kWh)	Yr 5 Jul. 1, 2014 - Jun. 30, 2015 (Mills/kWh)
1	Vintage 1					
2	Vintage 2					
3	Vintage 3					
4	.				TBD	TBD
5	.					TBD
6	etc.					
7	Total				+ TBD	+ TBD

Kroger Illustrative Example of REC Revenue Tracker Account Sur-Credit Calculation with Rolling Three-Year Amortization

Derivation of REC/CFI Regulatory Liability by Vintage ($000s)[1]:

Line No.	Description													Source
1	Assumed PSE After Tax Rate of Return (%):	8.25%												PSE Response to WUTC Data Request No. 5
2	Revenue Month	Jan-09	Feb-09	Mar-09	Apr-09	May-09	Jun-09	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09	
3	Monthly Historical California REC Sales Revenue (excluding cost of sale)													See PSE Responses to PC Nos. 30 & 37 [HIGHLY CONFIDENTIAL]
4	Monthly Other REC Sales Revenue (including cost of sale)													See PSE Responses to PC Nos. 30 & 37 [HIGHLY CONFIDENTIAL]
5	California Forecast REC Sales Revenue (excluding cost of sale)													See PSE Response to PC No. 37 [HIGHLY CONFIDENTIAL]
6	Monthly CFI Sales Revenue													See PSE Response to PC No. 31 [CONFIDENTIAL]
7	Total Sales Revenue													= Sum (Ln. 3 : Ln. 6)
8	Cast of CFI Sales													See PSE Response to PC No. 31 [CONFIDENTIAL]
9	Net REC/CFI Sales Revenue													= Ln. 7 - Ln. 8
10	PSE Share @ 10% (subject to cap)[2]													= 10% x Ln. 9
11	PSE Share Cumulative													= Sum (Ln. 10)
12	Low-Income Share @ 10% (subject to cap)[3]													= 10% x Ln. 9
13	Low-Income Share Cumulative													= Sum (Ln. 12)
14	Customer Share @ 80% (100% after caps satisfied)													= Ln. 9 - Ln. 10 - Ln. 12
15	Beginning Regulatory Balance													= Ln. 18 from prior month
16	Add Monthly Net REC/CFI Sales Revenue (Customer Share)													= Ln. 14
17	Carrying Cost													= [ROR + 12] x (Ln. 15 + Ln. 16)
18	Ending Regulatory Balance													= Ln 15 + Ln. 16 + Ln. 17
19	Revenue Month	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Source
20	Monthly Historical California REC Sales Revenue (excluding cost of sale)													See PSE Response to PC No. 37 [HIGHLY CONFIDENTIAL]
21	Monthly Other REC Sales Revenue (including cost of sale)													See PSE Response to PC No. 37 [HIGHLY CONFIDENTIAL]
22	California Forecast REC Sales Revenue (excluding cost of sale)													See PSE Response to PC No. 37 [HIGHLY CONFIDENTIAL]
23	Monthly CFI Sales Revenue													See PSE Response to PC No. 31 [CONFIDENTIAL]
24	Total Sales Revenue													= Sum (Ln. 20 : Ln. 23)
25	Cost of CFI Sales													See PSE Response to PC No. 31 [CONFIDENTIAL]
26	Net REC/CFI Sales Revenue													= Ln. 24 - Ln. 25
27	PSE Share @ 10% (subject to cap)[2]													= 10% x Ln. 26
28	PSE Share Cumulative													= Sum (Ln. 27)
29	Low-Income Share @ 10% (subject to cap)[3]													= 10% x Ln. 26
30	Low-Income Share Cumulative													= Sum (Ln. 29)
31	Customer Share @ 80% (100% after caps satisfied)													= Ln. 26 - Ln. 27 - Ln. 29
32	Beginning Regulatory Balance													= Ln. 35 from prior month
33	Add Monthly Net REC/CFI Sales Revenue (Customer Share)													= Ln. 31
34	Carrying Cost													= [ROR + 12] x (Ln. 32 + Ln. 33)
35	Ending Regulatory Balance													= Ln 32 + Ln. 33 + Ln. 34

Kroger Illustrative Example of REC Revenue Tracker Account Sur-Credit Calculation with Rolling Three-Year Amortization

Derivatinn of REC/CFI Regulatory Liability by Vintage ($000s)[1]:

Line No.	Description													Source
1	Assumed PSE After Tax Rate of Return (%):	8.25%												PSE Response to WUTC Data Reqnest No. 5
2	Revenue Month	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	
3	Monthly Historical California REC Sales Revenue (excluding cost of sale)													See PSE Responses to PC Nos. 30 & 37 [HIGHLY CONFIDENTIAL]
4	Monthly Other REC Sales Revenue (including cost of sale)													See PSE Responses to PC Nos. 30 & 37 [HIGHLY CONFIDENTIAL]
5	California Forecast REC Sales Revenue (excluding cost of sale)													See PSE Respoase to PC No. 37 [HIGHLY CONFIDENTIAL]
6	Monthly CFI Sales Revenne													See PSE Respoase to PC No. 31 [CONFIDENTIAL]
7	Total Sales Revenue													= Sum (Ln. 3 : Ln. 6)
8	Cost of CFI Sales													See PSE Response to PC No. 31 [CONFIDENTIAL]
9	Net REC/CFI Sales Revenue													= Ln. 7 - Ln. 8
10	PSE Share @ 10% (subject to cap)[2]													= 10% x Ln. 9
11	PSE Share Cumulative													= Sum (Ln. 10)
12	Low-Income Share @ 10% (subject to cap)[3]													= 10% x Ln. 9
13	Low-Income Share Cumulative													= Sum (Ln. 12)
14	Customer Share @ 80% (100% after caps satisfied)													= Ln. 9 - Ln. 10 - Ln. 12
15	Beginning Regulatory Balance													= Ln. 18 from prior month
16	Add Monthly Net REC/CFI Sales Revenue (Customer Share)													= Ln. 14
17	Carrying Cost													= [ROR ÷ 12] x (Ln. 15 + Ln. 16)
18	Ending Regulatory Balance													= Ln 15 + Ln. 16 + Ln. 17
19	Revenue Month	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Source
20	Monthly Historical California REC Sales Revenue (excluding cost of sale)													See PSE Response to PC No. 37 [HIGHLY CONFIDENTIAL]
21	Monthly Other REC Sales Revenue (including cost of sale)													See PSE Response to PC Nn. 37 [HIGHLY CONFIDENTIAL]
22	California Forecast REC Sales Revenue (excluding cost of sale)													See PSE Response to PC No. 37 [HIGHLY CONFIDENTIAL]
23	Monthly CFI Sales Revenne													See PSE Response to PC No. 31 [CONFIDENTIAL]
24	Total Sales Revenue													= Sum (Ln. 20 : Ln. 23)
25	Cost of CFI Sales													See PSE Response to PC No. 31 [CONFIDENTIAL]
26	Net REC/CFI Sales Revenue													= Ln. 24 - Ln. 25
27	PSE Share @ 10% (subject to cap)[2]													= 10% x Ln. 26
28	PSE Share Cumulative													= Sum (Ln. 27)
29	Low-Income Share @ 10% (subject to cap)[3]													= 10% x Ln. 26
30	Low-Income Share Cumulative													= Sum (Lo. 29)
31	Customer Share @ 80% (100% after caps satisfied)													= Ln. 26 - Ln. 27 - Ln. 29
32	Beginning Regulatory Balance													= Ln. 35 from prior month
33	Add Monthly Net REC/CFI Sales Revenue (Customer Share)													= Ln. 31
34	Carrying Cost													= [ROR ÷ 12] x (Ln. 32 + Ln. 33)
35	Ending Regulatory Balance													= Ln 32 + Ln. 33 + Ln. 34

Kroger Illustrative Example of REC Revenue Tracker Account Sur-Credit Calculation with Rolling Three-Year Amortization

Derivation of REC/CFI Regulatory Liability by Vintage ($000s)[1]:

Line No.	Description													Source
1	Assumed PSE After Tax Rate of Return (%):	8.25%												PSE Response to WUTC Data Request No. 5
2	Revenue Month	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	
3	Monthly Historical California REC Sales Revenue (excluding cost of sale)													See PSE Responses to PC Nos. 30 & 37 [HIGHLY CONFIDENTIAL]
4	Monthly Other REC Sales Revenue (including cost of sale)													See PSE Responses to PC Nos. 30 & 37 [HIGHLY CONFIDENTIAL]
5	California Forecast REC Sales Revenue (excluding cost of sale)													See PSE Response to PC No. 37 [HIGHLY CONFIDENTIAL]
6	Monthly CFI Sales Revenue													See PSE Response to PC No. 31 [CONFIDENTIAL]
7	Total Sales Revenue													= Sum (Ln. 3 : Ln. 6)
8	Cost of CFI Sales													See PSE Response to PC No. 31 [CONFIDENTIAL]
9	Net REC/CFI Sales Revenue													= Ln. 7 - Ln. 8
10	PSE Share @ 10% (subject to cap)[2]													= 10% x Ln. 9
11	PSE Share Cumulative													= Sum (Ln. 10)
12	Low-Income Share @ 10% (subject to cap)[3]													= 10% x Ln. 9
13	Low-Income Share Cumulative													= Sum (Ln. 12)
14	Customer Share @ 80% (100% after caps satisfied)													= Ln. 9 - Ln. 10 - Ln. 12
15	Beginning Regulatory Balance													= Ln. 18 from prior month
16	Add Monthly Net REC/CFI Sales Revenue (Customer Share)													= Ln. 14
17	Carrying Cost													= [ROR + 12] x (Ln. 15 + Ln. 16)
18	Ending Regulatory Balance													= Ln 15 + Ln. 16 + Ln. 17

Notes:
1. Calculation excludes prior investment interest earned by PSE on REC/CFI sales revenue prior to 11/30/09.
2.
3.

Kroger Illustrative Example of REC Revenue Tracker Account Sur-Credit Calculation with Rolling Three-Year Amortization

Vintage 1 - Amortization Schedule of REC/CFI Sales Revenue Regulatory Balance as of June 30, 2011 ($000s):

Line No.	Description													Source
1	Regulatory Liability Balance as of Jun 30, 2011													From p. 3, Ln. 18
2	Assumed PSE After Tax Rate of Return (%):	8.25%												PSE Response to WUTC Data Request No. 5
		Year 1												
		Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	
3	Beginning Regulatory Liability Balance [Beg. = Ln. 1]													= Ln. 7 from prior month
4	Amortization													= Derived Amount
5	Adjusted Regulatory Liability Balance													= Ln. 3 - Ln. 4
6	Carrying cost @ ROR ÷ 12 x Gross-Up													= [ROR ÷ 12] x (Ln. 5)
7	Ending Regulatory Liability Balance													= Ln. 5 + Ln. 6
		Year 2												
		Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	
8	Beginning Regulatory Liability Balance													= Ln. 12 from prior month
9	Amortization													= Derived Amount
10	Adjusted Regulatory Liability Balance													= Ln. 8 - Ln. 9
11	Carrying cost @ ROR ÷ 12 x Gross-Up													= [ROR ÷ 12] x (Ln. 10)
12	Ending Regulatory Liability Balance													= Ln. 10 + Ln. 11
		Year 3												
		Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	
13	Beginning Regulatory Liability Balance													= Ln. 17 from prior month
14	Amortization													= Derived Amount
15	Adjusted Regulatory Liability Balance													= Ln. 13 - Ln. 14
16	Carrying cost @ ROR ÷ 12 x Gross-Up													= [ROR ÷ 12] x (Ln. 15)
17	Ending Regulatory Liability Balance													= Ln. 15 + Ln. 16

Sur-Credit Calculation for Vintage 1

	Description	Kroger Recommended	Source
18	Total REC/CFI Annual Amortization ($000s)		= Sum (Ln. 4)
19	PSE Total Annual Jurisdictional Retail Energy Sales (MWh)	23,734,956	See PSE Rebuttal Exhibit No. JKP-28, p. 1 of 1 in PSE GRC UE-090704/UG-090705
20	Less Choice/Retail Wheeling Energy Sales - 448/449 (MWh)	(2,040,112)	See PSE Rebuttal Exhibit No. JKP-28, p. 1 of 1 in PSE GRC UE-090704/UG-090705
21	Net Retail Energy Sales (MWh)	21,694,844	= Ln. 19 - Ln. 20
22	RRTA Sur-Credit (mills/kWh)		= [Ln. 18 x 1000 x 1000] ÷ [Ln. 21 x 1000]

Kroger Illustrative Example of REC Revenue Tracker Account Sur-Credit Calculation with Rolling Three-Year Amortization

Vintage 2 - Amortization Schedule of REC/CFI Sales Revenue Regulatory Balance as of June 30, 2012 ($000s):

Line No.	Description													Source
1	Regulatory Liability Balance as of Jun 30, 2012													From p. 3, Ln. 35
2	Assumed PSE After Tax Rate of Return (%):	8.25%												PSE Response to WUTC Data Request No. 5
		Year 1												
		Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	
3	Beginning Regulatory Liability Balance [Beg. = Ln. 1]													= Ln. 7 from prior month
4	Amortization													= Derived Amount
5	Adjusted Regulatory Liability Balance													= Ln. 3 - Ln. 4
6	Carrying cost @ ROR ÷ 12 x Gross-Up													= [ROR ÷ 12] x (Ln. 5)
7	Ending Regulatory Liability Balance													= Ln. 5 + Ln. 6
		Year 2												
		Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	
8	Beginning Regulatory Liability Balance													= Ln. 12 from prior month
9	Amortization													= Derived Amount
10	Adjusted Regulatory Liability Balance													= Ln. 8 - Ln. 9
11	Carrying cost @ ROR ÷ 12 x Gross-Up													= [ROR ÷ 12] x (Ln. 10)
12	Ending Regulatory Liability Balance													= Ln. 10 + Ln. 11
		Year 3												
		Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	
13	Beginning Regulatory Liability Balance													= Ln. 17 from prior month
14	Amortization													= Derived Amount
15	Adjusted Regulatory Liability Balance													= Ln. 13 - Ln. 14
16	Carrying cost @ ROR ÷ 12 x Gross-Up													= [ROR ÷ 12] x (Ln. 15)
17	Ending Regulatory Liability Balance													= Ln. 15 + Ln. 16

Sur-Credit Calculation for Vintage 2

	Description	Kroger Recommended	Source
18	Total REC/CFI Annual Amortization ($000s)		= Sum (Ln. 4)
19	PSE Total Annual Jurisdictional Retail Energy Sales (MWh)	23,734,956	See PSE Rebuttal Exhibit No. JKP-28, p. 1 of 1 in PSE GRC UE-090704/UG-090705
20	Less Choice/Retail Wheeling Energy Sales - 448/449 (MWh)	(2,040,112)	See PSE Rebuttal Exhibit No. JKP-28, p. 1 of 1 in PSE GRC UE-090704/UG-090705
21	Net Retail Energy Sales (MWh)	21,694,844	= Lo. 19 - Ln. 20
22	RRTA Sur-Credit (mills/kWh)		= [Ln. 18 x 1000 x 1000] ÷ [Ln. 21 x 1000]

Note: No true-up is assumed in this example.

Kroger Illustrative Example of REC Revenue Tracker Account Sur-Credit Calculation with Rolling Three-Year Amortization

Vintage 3 - Amortization Schedule of REC/CFI Sales Revenue Regulatory Balance as of June 30, 2013 ($000s):

Line No.	Description													Source
1	Regulatory Liability Balance as of Jun 30, 2013													From p. 4, Ln. 18
2	Assumed PSE After Tax Rate of Return (%):	8.25%												PSE Response to WUTC Data Request No. 5
		Year 1												
		Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	
3	Beginning Regulatory Liability Balance [Beg. = Ln. 1]													= Ln. 7 from prior month
4	Amortization													= Derived Amount
5	Adjusted Regulatory Liability Balance													= Ln. 3 - Ln. 4
6	Carrying cost @ ROR ÷ 12 x Gross-Up													= [ROR ÷ 12] x (Ln. 5)
7	Ending Regulatory Liability Balance													= Ln. 5 + Ln. 6
		Year 2												
		Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	
8	Beginning Regulatory Liability Balance													= Ln. 12 from prior month
9	Amortization													= Derived Amount
10	Adjusted Regulatory Liability Balance													= Ln. 8 - Ln. 9
11	Carrying cost @ ROR ÷ 12 x Gross-Up													= [ROR ÷ 12] x (Ln. 10)
12	Ending Regulatory Liability Balance													= Ln. 10 + Ln. 11
		Year 3												
		Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	
13	Beginning Regulatary Liability Balance													= Ln. 17 from prior month
14	Amortization													= Derived Amount
15	Adjusted Regulatory Liability Balance													= Ln. 13 - Ln. 14
16	Carrying cost @ ROR ÷ 12 x Gross-Up													= [ROR ÷ 12] x (Ln. 15)
17	Ending Regulatory Liability Balance													= Ln. 15 + Ln. 16

Sur-Credit Calculation for Vintage 3

	Description	Kroger Recommended	Source
18	Total REC/CFI Annual Amortization ($000s)		= Sum (Ln. 4)
19	PSE Total Annual Jurisdictional Retail Energy Sales (MWh)	23,734,956	See PSE Rebuttal Exhibit No. JKP-28, p. 1 of 1 in PSE GRC UE-090704/UG-090705
20	Less Choice/Retail Wheeling Energy Sales - 448/449 (MWh)	(2,040,112)	See PSE Rebuttal Exhibit No. JKP-28, p. 1 of 1 in PSE GRC UE-090704/UG-090705
21	Net Retail Energy Sales (MWh)	21,694,844	= Ln. 19 - Ln. 20
22	RRTA Sur-Credit (mills/kWh)		= [Ln. 18 x 1000 x 1000] ÷ [Ln. 21 x 1000]

Note: No true-up is assumed in this example.

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Amended Petition of

PUGET SOUND ENERGY, INC., **Docket No. UE-070725**

For an Order Authorizing the Use of the Proceeds from the Sale of Renewable Energy Credits and Carbon Financial Instruments

AFFIDAVIT OF KEVIN C. HIGGINS

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

Kevin C. Higgins, being first duly sworn, deposes and states that:

1. He is a Principal with Energy Strategies, L.L.C., in Salt Lake City, Utah;

2. He is the witnesses who sponsors the testimony entitled "Prefiled Response Testimony of Kevin C. Higgins";

3. Said testimony was prepared by him;

4. If inquiries were made as to the facts in said testimony and exhibits he would respond as therein set forth; and

5. The aforesaid testimony and exhibits are true and correct to the best of his knowledge, information and belief.

Kevin C. Higgins

Subscribed and sworn to or affirmed before me this 27th day of January, 2010, by Kevin C. Higgins.

Notary Public

Notary Public
ANGELINE WHITWORTH PACE
Commission #575247
My Commission Expires
July 15, 2012
State of Utah

KEVIN C. HIGGINS
Principal, Energy Strategies, L.L.C.
215 South State St., Suite 200, Salt Lake City, UT 84111

Vitae

PROFESSIONAL EXPERIENCE

Principal, Energy Strategies, L.L.C., Salt Lake City, Utah, January 2000 to present. Responsible for energy-related economic and policy analysis, regulatory intervention, and strategic negotiation on behalf of industrial, commercial, and public sector interests. Previously Senior Associate, February 1995 to December 1999.

Adjunct Instructor in Economics, Westminster College, Salt Lake City, Utah, September 1981 to May 1982; September 1987 to May 1995. Taught in the economics and M.B.A. programs. Awarded Adjunct Professor of the Year, Gore School of Business, 1990-91.

Chief of Staff to the Chairman, Salt Lake County Board of Commissioners, Salt Lake City, Utah, January 1991 to January 1995. Senior executive responsibility for all matters of county government, including formulation and execution of public policy, delivery of approximately 140 government services, budget adoption and fiscal management (over $300 million), strategic planning, coordination with elected officials, and communication with consultants and media.

Assistant Director, Utah Energy Office, Utah Department of Natural Resources, Salt Lake City, Utah, August 1985 to January 1991. Directed the agency's resource development section, which provided energy policy analysis to the Governor, implemented state energy development policy, coordinated state energy data collection and dissemination, and managed energy technology demonstration programs. Position responsibilities included policy formulation and implementation, design and administration of energy technology demonstration programs, strategic management of the agency's interventions before the Utah Public Service Commission, budget preparation, and staff development. Supervised a staff of economists, engineers, and policy analysts, and served as lead economist on selected projects.

Utility Economist, Utah Energy Office, January 1985 to August 1985. Provided policy and economic analysis pertaining to energy conservation and resource development, with an emphasis on utility issues. Testified before the state Public Service Commission as an expert witness in cases related to the above.

Acting Assistant Director, Utah Energy Office, June 1984 to January 1985. Same responsibilities as Assistant Director identified above.

Research Economist, Utah Energy Office, October 1983 to June 1984. Provided economic analysis pertaining to renewable energy resource development and utility issues. Experience includes preparation of testimony, development of strategy, and appearance as an expert witness for the Energy Office before the Utah PSC.

Operations Research Assistant, Corporate Modeling and Operations Research Department, Utah Power and Light Company, Salt Lake City, Utah, May 1983 to September 1983. Primary area of responsibility: designing and conducting energy load forecasts.

Instructor in Economics, University of Utah, Salt Lake City, Utah, January 1982 to April 1983. Taught intermediate microeconomics, principles of macroeconomics, and economics as a social science.

Teacher, Vernon-Verona-Sherrill School District, Verona, New York, September 1976 to June 1978.

EDUCATION

Ph.D. Candidate, Economics, University of Utah (coursework and field exams completed, 1981).

Fields of Specialization: Public Finance, Urban and Regional Economics, Economic Development, International Economics, History of Economic Doctrines.

Bachelor of Science, Education, State University of New York at Plattsburgh, 1976 (cum laude).

Danish International Studies Program, University of Copenhagen, 1975.

SCHOLARSHIPS AND FELLOWSHIPS

University Research Fellow, University of Utah, Salt Lake City, Utah 1982 to 1983.
Research Fellow, Institute of Human Resources Management, University of Utah, 1980 to 1982.
Teaching Fellow, Economics Department, University of Utah, 1978 to 1980.
New York State Regents Scholar, 1972 to 1976.

EXPERT TESTIMONY

"Application of Appalachian Power Company for a 2009 Statutory Review of Rates Pursuant to § 56.585.1 A of the Code of Virginia," **Virginia** Corporation Commission, Case No. PUE-2009-00030. Direct testimony submitted December 28, 2009.

"In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications with Reconciliation Mechanism and Tariffs for Generation Service," Public Utilities Commission of **Ohio**, Case No. 09-906-EL-SSO. Direct testimony submitted December 4, 2009. Deposed December 10, 2009.

"2009 Puget Sound Energy General Rate Case," **Washington** Utilities and Transportation Commission, Docket Nos. UE-090704 and UG-090705. Response testimony submitted November 17, 2009. Joint testimony in support of stipulation submitted January 8, 2010.

"In the Matter of the Application of Rocky Mountain Power for Approval of Its Proposed Energy Cost Adjustment Mechanism," **Utah** Public Service Commission, Docket No. 09-035-15. Direct testimony submitted November 16, 2009. Surrebuttal testimony submitted January 5, 2010. Cross examined January 12, 2010.

"In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of Its Proposed Electric Service Schedules and Electric Service Regulations," **Utah** Public Service Commission, Docket No. 09-035-23. Direct testimony submitted October 8, 2009. Rebuttal testimony submitted November 12, 2009. Surrebuttal testimony submitted November 30, 2009. Cross examined December 15-16, 2009.

"Re: The Tariff Sheets Filed by Public Service Company of Colorado with Advice Letter No. 1535 – Electric," **Colorado** Public Utilities Commission, Docket No. 09AL-299E. Answer testimony submitted October 2, 2009. Surrebuttal testimony submitted December 18, 2009.

"In the Matter of the Applications of Westar Energy, Inc., and Kansas Gas and Electric Company for Approval to Make Certain Changes in their Charges for Electric Service," **Kansas** Corporation Commission, Docket No. 09-WSEE-925-RTS. Direct testimony submitted September 30, 2009. Cross Answer testimony submitted October 16, 2009.

"Central Illinois Light Company d/b/a AmerenCILCO Proposed General Increase in Electric Delivery Service Rates; Central Illinois Public Service Company d/b/a AmerenCIPS Proposed General Increase in Electric Delivery Service Rates; Illinois Power Company d/b/a/ AmerenIP Proposed General Increase in Electric Delivery Service Rates; Central Illinois Light Company d/b/a AmerenCILCO Proposed General Increase in Gas Delivery Service Rates; Central Illinois Public Service Company d/b/a AmerenCIPS Proposed General Increase in Gas Delivery Service Rates; Illinois Power Company d/b/a/ AmerenIP Proposed General Increase in Gas Delivery Service Rates, **Illinois** Commerce Commission, Docket Nos. 09-0306, 09-0307, 09-0308, 09-0309, 09-0310, and 09-0311. Direct testimony submitted September 28, 2009. Rebuttal testimony submitted November 20, 2009.

"In the Matter of the Complaint of Nucor Steel-Indiana, a Division of Nucor Corporation against Duke Energy Indiana, Inc. for Determination of Reasonable and Just Charges and Conditions for Electric Service and Request for Expedited Adjudication," **Indiana** Utility Regulatory Commission, Cause No. 43754. Direct testimony submitted September18, 2009. Rebuttal testimony submitted December 3, 2009.

"In the Matter of PacifiCorp's Filing of Revised Tariff Schedules for Electric Service in Oregon," Public Utility Commission of **Oregon,** Docket No. UE-210. Reply testimony submitted July 24, 2009. Joint testimony in support of stipulation submitted September 25, 2009.

"In The Matter of the Application of Rocky Mountain Power to Establish an Avoided Cost Methodology for Customers That Do Not Qualify for Tariff Schedule 37 – Avoided Cost Purchases from Qualifying Facilities," **Wyoming** Public Service Commission, Docket No. 20000-342-EA-09. Direct testimony submitted July 21, 2009. Cross examined September 1, 2009.

"In the Matter of PacifiCorp, dba Pacific Power, 2010 Transition Adjustment Mechanism," Public Utility Commission of **Oregon,** Docket No. UE-207. Reply testimony submitted July 14, 2009. Joint testimony in support of stipulation submitted September 25, 2009.

"In The Matter of the Application of The Detroit Edison Company for Authority to Increase Its Rates, Amend Its Rate Schedules and Rules Governing the Distribution and Supply of Electric Energy," **Michigan** Public Service Commission, Case No. U-15768. Direct testimony submitted July 9, 2009. Rebuttal testimony submitted July 30, 2009.

"In the Matter of the Investigation of Westar Energy, Inc., and Kansas Gas and Electric Company to Consider the Issue of Rate Consolidation and Resulting Rate Design," **Kansas** Corporation Commission," Docket No. 09-WSEE-641-GIE. Direct testimony submitted June 26, 2009. Cross examined August 17, 2009.

"Illinois Commerce Commission on Its Own Motion vs Commonwealth Edison Company, Investigation of Rate Design Pursuant to Section 9-250 of the Public Utilities Act," **Illinois** Commerce Commission, Docket No. 08-0532. Direct testimony submitted May 22, 2009.

"In the Matter of the Application of Duke Energy Kentucky, Inc. for Approval of Energy Efficiency Plan, Including an Energy Efficiency Rider and Portfolio of Energy Efficiency Programs," **Kentucky** Public Service Commission, Case No. 2008-00495. Direct testimony submitted May 11, 2009.

"In the Matter of the Application by Nevada Power Company d/b/a NV Energy, filed Pursuant to NRS§704.110(3) and NRS §704.110(4) for Authority to Increase Its Annual Revenue Requirement for General Rates Charged to All Classes of Customers, Begin to Recover the Costs of Acquiring the Bighorn Power Plant, Constructing the Clark Peakers, Environmental Retrofits and Other Generating, Transmission and Distribution Plant Additions, to Reflect Changes in Cost of Service and for Relief Properly Related Thereto, Public Utilities Commission of **Nevada**, Docket No. 08-12002. Direct testimony submitted April 14, 2009 (revenue requirement) and April 21, 2009 (cost of service/rate design). Cross examined May 6, 2009.

"Verified Petition of Duke Energy Indiana, Inc. Requesting the Indiana Utility Regulatory Commission to Approve an Alternative Regulatory Plan Pursuant to the Ind. Code 8-1-2.5, *Et Seq.*, for the Implementation of an Electric Distribution System "SmartGrid" and Advanced Metering Infrastructure, Distribution Automation Investments, and a Distribution Renewable Generation Demonstration Project and Associated Accounting and Rate Recovery Mechanisms, Including a Ratemaking Proposal to Update Distribution Rates Annually and a "Lost Revenue" Recovery Mechanism, in Accordance with Ind. Code 8-1-2-42(a) and 8-1-2.5-1 *Et Seq.* and Preliminary Approval of the Estimated Costs and Scheduled Deployment of the Company's SmartGrid Initiative," **Indiana** Utility Regulatory Commission, Cause No. 43501. Direct testimony submitted February 27, 2009.

"In The Matter of the Application of Duke Energy Ohio for an Increase in Electric Distribution Rates," Public Utilities Commission of **Ohio**, Case No. 08-709-EL-AIR; "In the Matter of the Application of Duke Energy Ohio for Tariff Approval," Case No. 08-710-EL-ATA; "In the Matter of the Application of Duke Energy Ohio for Approval to Change Accounting Methods," Case No. 08-711-EL-AAM. Direct testimony submitted February 26, 2009.

"In The Matter of the Amended Application of Rocky Mountain Power for Approval of a General Rate Increase of Approximately $28.8 Million per Year (6.1 Percent Overall Average Increase)", **Wyoming** Public Service Commission, Docket No. 20000-333-ER-08. Direct testimony submitted January 30, 2009. Summary of cross answer testimony submitted February 27, 2009. Settlement testimony submitted March 13, 2009. Cross examined March 24, 2009.

"In the Matter of the Application of Dayton Power and Light Company for Approval of Its Electric Security Plan," Public Utilities Commission of **Ohio**, Case No. 08-1094-EL-SSO; "In the Matter of the Application of Dayton Power and Light Company for Approval of Revised Tariffs, Case No. 08-1095-EL-ATA; "In the Matter of the Application of Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code §4905.13," Case No. 08-1096-EL-AAM; In the Matter of the Application of Dayton Power and Light Company for Approval of Its Amended Corporate Separation Plan, Case No. 08-1097-EL-UNC. Direct testimony submitted January 26, 2009. Deposed February 6, 2009. Testimony withdrawn pursuant to stipulation filed February 24, 2009.

"Application of Oncor Electric Delivery Company LLC for Authority to Change Rates," Public Utility Commission of **Texas**, SOAH Docket No. 473-08-3681, PUC Docket No. 35717. Direct testimony submitted November 26, 2008. Cross examined February 3, 2009.

"In the Matter of the Application of Columbus Southern Power Company for Approval of Its Electric Security Plan; An Amendment to Its Corporate Separation Plan; and the Sale of Certain Generating Assets", Public Utilities Commission of **Ohio**, Case No. 08-917-EL-SSO; "In the Matter of the Application of Ohio Power Company for Approval of Its Electric Security Plan; and an Amendment to Its Corporate Separation Plan," Case No. 08-918-EL-SSO. Direct testimony submitted October 31, 2008. Cross examined November 25, 2008.

"Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Base Rates," **Kentucky** Public Service Commission, Case No. 2008-00252. Direct testimony submitted October 28, 2008.

"Application of Kentucky Utilities Company for an Adjustment of Base Rates," **Kentucky** Public Service Commission, Case No. 2008-00251. Direct testimony submitted October 28, 2008.

"In the Matter of the Application of Idaho Power Company for Authority to Increase its Rates and Charges for Electric Service," **Idaho** Public Utilities Commission, Case No. IPC-E-08-10. Direct testimony submitted October 24, 2008. Rebuttal testimony submitted December 3, 2008. Cross examined December 19, 2008.

"In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations," **Utah** Public Service Commission, Docket No. 08-035-38. Direct testimony submitted October 7, 2008 (test period) and February 12, 2009 (revenue requirement). Cross examined October 28, 2008 (test period).

"In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan," Public Utility

Commission of **Ohio**, Case No. 08-935-EL-SSO. Direct testimony submitted September 29, 2008. Deposed October 13, 2008. Cross examined October 21, 2008.

"In the Matter of the Application of Westar Energy, Inc. and Kansas Gas and Electric Company for Approval to Make Certain Changes In Their Charges for Electric Service," State Corporation Commission of **Kansas**, Docket No. 08-WSEE-1041-RTS. Direct testimony submitted September 29, 2008. Cross Answer testimony submitted October 8, 2008.

"In the Matter of Appalachian Power Company's Application for Increase in Electric Rates," **Virginia** State Corporation Commission, Case No. PUE-2008-00046. Direct testimony submitted September 26, 2008.

"In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications with Reconciliation Mechanism and Tariffs for Generation Service," Public Utility Commission of **Ohio**, Case No. 08-936-EL-SSO. Direct testimony submitted September 9, 2008. Deposed September 16, 2008.

"In the Matter of the Application of Arizona Public Service Company for a Hearing to Determine the Fair Value of the Utility Property of the Company for Ratemaking Purposes, to Fix a Just and Reasonable Rate of Return Thereon, to Approve Rate Schedules Designed to Develop Such Return," **Arizona** Corporation Commission, Docket No. E-01345A-08-0172. Direct testimony submitted August 29, 2008 (interim rates), December 19, 2008 (revenue requirement), January 9, 2009 (cost of service, rate design), and July 1, 2009 (settlement agreement). Reply testimony submitted August 6, 2009 (settlement agreement). Cross examined September 16, 2008 (interim rates) and August 20, 2009 (settlement agreement).

"Verified Joint Petition of Duke Energy Indiana, Inc., Indianapolis Power & Light Company, Northern Indiana Public Service Company and Vectren Energy Delivery of Indiana, Inc. for Approval, if and to the Extent Required, of Certain Changes in Operations That Are Likely To Result from the Midwest Independent System Operator, Inc.'s Implementation of Revisions to Its Open Access Transmission and Energy Markets Tariff to Establish a Co-Optimized, Competitive Market for Energy and Ancillary Services Market; and for Timely Recovery of Costs Associated with Joint Petitioners' Participation in Such Ancillary Services Market," **Indiana** Utility Regulatory Commission, Cause No. 43426. Direct testimony submitted August 6, 2008. Direct testimony in opposition to Settlement Agreement submitted November 12, 2008. Testimony withdrawn pursuant to stipulation.

"In The Matter of the Application of The Detroit Edison Company for Authority to Increase Its Rates, Amend Its Rate Schedules and Rules Governing the Distribution and Supply of Electric Energy, and for Miscellaneous Accounting Authority," **Michigan** Public Service Commission, Case No. U-15244.

Direct testimony submitted July 15, 2008. Rebuttal testimony submitted August 8, 2008.

"Portland General Electric General Rate Case Filing," Public Utility Commission of **Oregon,** Docket No. UE-197. Direct testimony submitted July 9, 2008. Surrebuttal testimony submitted September 15, 2008.

"In the Matter of PacifiCorp, dba Pacific Power, 2009 Transition Adjustment Mechanism, Schedule 200, Cost-Based Supply Service," Public Utility Commission of **Oregon,** Docket No. UE-199. Reply testimony submitted June 23, 2008. Joint testimony in support of stipulation submitted September 4, 2008.

"2008 Puget Sound Energy General Rate Case," **Washington** Utilities and Transportation Commission, Docket Nos. UE-072300 and UG-072301. Response testimony submitted May 30, 2008. Cross-Answer testimony submitted July 3, 2008. Joint testimony in support of partial stipulations submitted July 3, 2008 (gas rate spread/rate design), August 12, 2008 (electric rate spread/rate design), and August 28, 2008 (revenue requirements). Cross examined September 3, 2008.

"Verified Petition of Duke Energy Indiana, Inc. Requesting the Indiana Utility Regulatory Commission to Approve an Alternative Regulatory Plan Pursuant to the Ind. Code 8-1-2.5, Et Seq., for the Offering of Energy Efficiency Conservation, Demand Response, and Demand-Side Management Programs and Associated Rate Treatment Including Incentives Pursuant to a Revised Standard Contract Rider No. 66 in Accordance with Ind. Code 8-1-2.5-1Et Seq. and 8-1-2-42(a); Authority to Defer Program Costs Associated with Its Energy Efficiency Portfolio of Programs; Authority to Implement New and Enhanced Energy Efficiency Programs in Its Energy Efficiency Portfolio of Programs; and Approval of a Modification of the Fuel Adjustment Clause Earnings and Expense Tests," **Indiana** Utility Regulatory Commission, Cause No. 43374. Direct testimony submitted May 21, 2008. Testimony withdrawn pursuant to stipulation.

"Cinergy Corp., Duke Energy Ohio, Inc., Cinergy Power Investments, Inc., Generating Facilities LLCs," **Federal Energy Regulatory Commission**, Docket No. EC-08-78-000. Affidavit filed May 14, 2008.

"Application of Entergy Gulf States, Inc. for Authority to Change Rates and to Reconcile Fuel Costs, Public Utility Commission of **Texas**, Docket No. 34800 [SOAH Docket No. 473-08-0334]. Direct testimony submitted April 11, 2008. Testimony withdrawn pursuant to stipulation.

"Central Illinois Light Company d/b/a AmerenCILCO Proposed General Increase in Electric Delivery Service Rates, Central Illinois Public Service Company d/b/a AmerenCIPS Proposed General Increase in Electric Delivery Service Rates, Illinois Power Company d/b/a/ AmerenIP Proposed General Increase in Electric Delivery Service Rates, Central Illinois Light Company d/b/a AmerenCILCO, Proposed General Increase in Gas Delivery Service Rates, Central Illinois

Public Service Company d/b/a AmerenCIPS Proposed General Increase in Gas Delivery Service Rates, Illinois Power Company d/b/a/ AmerenIP Proposed General Increase in Gas Delivery Service Rates," **Illinois** Commerce Commission, Docket Nos. 07-0585, 07-0586, 07-0587, 07-0588, 07-0589, 07-0590. Direct testimony submitted March 14, 2008. Rebuttal testimony submitted April 8, 2008.

"In the Matter of the Application of Public Service Company of Colorado for Authority to Implement an Enhanced Demand Side Management Cost Adjustment Mechanism to Include Current Recovery and Incentives," **Colorado** Public Utilities Commission, Docket No. 07A-420E. Answer testimony submitted March 10, 2008. Cross examined April 25, 2008.

"An Investigation of the Energy and Regulatory Issues in Section 50 of Kentucky's 2007 Energy Act," **Kentucky** Public Service Commission, Administrative Case No. 2007-00477. Direct testimony submitted February 29, 2008. Supplemental direct testimony submitted April 1, 2008. Cross examined April 30, 2008.

"In the Matter of the Application of Tucson Electric Power Company for the Establishment of Just and Reasonable Rates and Charges Designed to Realize a Reasonable Rate of Return on the Fair Value of Its Operations throughout the State of Arizona," **Arizona** Corporation Commission, Docket No. E-01933A-07-0402. Direct testimony submitted February 29, 2008 (revenue requirement), March 14, 2008 (rate design), and June 12, 2008 (settlement agreement). Cross examined July 14, 2008.

"Commonwealth Edison Company Proposed General Increase in Electric Rates," **Illinois** Commerce Commission, Docket No. 07-0566. Direct testimony submitted February 11, 2008. Rebuttal testimony submitted April 8, 2008.

"In the Matter of the Application of Questar Gas Company to File a General Rate Case," **Utah** Public Service Commission, Docket No. 07-057-13. Direct testimony submitted January 28, 2008 (test period), March 31, 2008 (rate of return), April 21, 2008 (revenue requirement), and August 18, 2008 (cost of service, rate spread, rate design). Rebuttal testimony submitted September 22, 2008 (cost of service, rate spread, rate design). Surrebuttal testimony submitted May 12, 2008 (rate of return) and October 7, 2008 (cost of service, rate spread, rate design). Cross examined February 8, 2008 (test period), May 21, 2008 (rate of return), and October 15, 2008 (cost of service, rate spread, rate design).

"In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations, Consisting of a General Rate Increase of Approximately $161.2 Million Per Year, and for Approval of a New Large Load Surcharge," **Utah** Public Service Commission, Docket No. 07-035-93. Direct testimony submitted January 25, 2008 (test period), April 7, 2008 (revenue requirement), and July 21, 2008 (cost of service,

rate design). Rebuttal testimony submitted September 3, 2008 (cost of service, rate design). Surrebuttal testimony submitted May 23, 2008 (revenue requirement) and September 24, 2008 (cost of service, rate design). Cross examined February 7, 2008 (test period).

"In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices and for Tariff Approvals," Public Utilities Commission of **Ohio**, Case Nos. 07-551-EL-AIR, 07-552-EL-ATA, 07-553-EL-AAM, and 07-554-EL-UNC. Direct testimony submitted January 10, 2008.

"In the Matter of the Application of Rocky Mountain Power for Authority to Increase Its Retail Electric Utility Service Rates in Wyoming, Consisting of a General Rate Increase of Approximately $36.1 Million per Year, and for Approval of a New Renewable Resource Mechanism and Marginal Cost Pricing Tariff," **Wyoming** Public Service Commission, Docket No. 20000-277-ER-07. Direct testimony submitted January 7, 2008. Cross examined March 6, 2008.

"In the Matter of the Application of Idaho Power Company for Authority to Increase Its Rates and Charges for Electric Service to Electric Customers in the State of Idaho," **Idaho** Public Utilities Commission, Case No. IPC-E-07-8. Direct testimony submitted December 10, 2007. Cross examined January 23, 2008.

"In The Matter of the Application of Consumers Energy Company for Authority to Increase Its Rates for the Generation and Distribution Of Electricity and Other Relief," **Michigan** Public Service Commission, Case No. U-15245. Direct testimony submitted November 6, 2007. Rebuttal testimony submitted November 20, 2007.

"In the Matter of Montana-Dakota Utilities Co., Application for Authority to Establish Increased Rates for Electric Service," **Montana** Public Service Commission, Docket No. D2007.7.79. Direct testimony submitted October 24, 2007.

"In the Matter of the Application of Public Service Company of New Mexico for Revision of its Retail Electric Rates Pursuant to Advice Notice No. 334," **New Mexico** Public Regulation Commission, Case No. 07-0077-UT. Direct testimony submitted October 22, 2007. Rebuttal testimony submitted November 19, 2007. Cross examined December 12, 2007.

"In The Matter of Georgia Power Company's 2007 Rate Case," **Georgia** Public Service Commission, Docket No. 25060-U. Direct testimony submitted October 22, 2007. Cross examined November 7, 2007.

"In the Matter of the Application of Rocky Mountain Power for an Accounting Order to Defer the Costs Related to the MidAmerican Energy Holdings Company Transaction," **Utah** Public

Service Commission, Docket No. 07-035-04; "In the Matter of the Application of Rocky Mountain Power, a Division of PacifiCorp, for a Deferred Accounting Order To Defer the Costs of Loans Made to Grid West, the Regional Transmission Organization," Docket No. 06-035-163; "In the Matter of the Application of Rocky Mountain Power for an Accounting Order for Costs related to the Flooding of the Powerdale Hydro Facility," Docket No. 07-035-14. Direct testimony submitted September 10, 2007. Surrebuttal testimony submitted October 22, 2007. Cross examined October 30, 2007.

"In the Matter of General Adjustment of Electric Rates of East Kentucky Power Cooperative, Inc.," **Kentucky** Public Service Commission, Case No. 2006-00472. Direct testimony submitted July 6, 2007. Supplemental direct testimony submitted March 18, 2008.

"In the Matter of the Application of Sempra Energy Solutions for a Certificate of Convenience and Necessity for Competitive Retail Electric Service," **Arizona** Corporation Commission, Docket No. E-03964A-06-0168. Direct testimony submitted July 3, 2007. Rebuttal testimony submitted January 17, 2008 and February 7, 2007.

"Application of Public Service Company of Oklahoma for a Determination that Additional Electric Generating Capacity Will Be Used and Useful," **Oklahoma** Corporation Commission, Cause No. PUD 200500516; "Application of Public Service Company of Oklahoma for a Determination that Additional Baseload Electric Generating Capacity Will Be Used and Useful," Cause No. PUD 200600030; "In the Matter of the Application of Oklahoma Gas and Electric Company for an Order Granting Pre-Approval to Construct Red Rock Generating Facility and Authorizing a Recovery Rider," Cause No. PUD200700012. Responsive testimony submitted May 21, 2007. Cross examined July 26, 2007.

"Application of Nevada Power Company for Authority to Increase Its Annual Revenue Requirement for General Rates Charged to All Classes of Electric Customers and for Relief Properly Related Thereto," Public Utilities Commission of **Nevada**, Docket No. 06-11022. Direct testimony submitted March 14, 2007 (Phase III – revenue requirements) and March 19, 2007 (Phase IV – rate design). Cross examined April 10, 2007 (Phase III – revenue requirements) and April 16, 2007 (Phase IV – rate design).

"In the Matter of the Application of Entergy Arkansas, Inc. for Approval of Changes in Rates for Retail Electric Service," **Arkansas** Public Service Commission, Docket No. 06-101-U. Direct testimony submitted February 5, 2007. Surrebuttal testimony submitted March 26, 2007.

"Monongahela Power Company and The Potomac Edison Company, both d/b/a Allegheny Power – Rule 42T Application to Increase Electric Rates and Charges," Public Service Commission of **West Virginia**, Case No. 06-0960-E-42T; "Monongahela Power Company and The Potomac Edison Company, both d/b/a Allegheny Power – Information Required for Change of

Depreciation Rates Pursuant to Rule 20," Case No. 06-1426-E-D. Direct and rebuttal testimony submitted January 22, 2007.

"In the Matter of the Tariffs of Aquila, Inc., d/b/a Aquila Networks-MPS and Aquila Networks-L&P Increasing Electric Rates for the Services Provided to Customers in the Aquila Networks-MPS and Aquila Networks-L&P Missouri Service Areas," **Missouri** Public Service Commission, Case No. ER-2007-0004. Direct testimony submitted January 18, 2007 (revenue requirements) and January 25, 2007 (revenue apportionment). Supplemental direct testimony submitted February 27, 2007.

"In the Matter of the Filing by Tucson Electric Power Company to Amend Decision No. 62103, **Arizona** Corporation Commission, Docket No. E-01933A-05-0650. Direct testimony submitted January 8, 2007. Surrebuttal testimony filed February 8, 2007. Cross examined March 8, 2007.

"In the Matter of Union Electric Company d/b/a AmerenUE for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area," **Missouri** Public Service Commission, Case No. ER-2007-0002. Direct testimony submitted December 15, 2006 (revenue requirements) and December 29, 2006 (fuel adjustment clause/cost-of-service/rate design). Rebuttal testimony submitted February 5, 2007 (cost-of-service). Surrebuttal testimony submitted February 27, 2007. Cross examined March 21, 2007.

"In the Matter of Application of The Union Light, Heat and Power Company d/b/a Duke Energy Kentucky, Inc. for an Adjustment of Electric Rates," **Kentucky** Public Service Commission, Case No. 2006-00172. Direct testimony submitted September 13, 2006.

"In the Matter of Appalachian Power Company's Application for Increase in Electric Rates," **Virginia** State Corporation Commission, Case No. PUE-2006-00065. Direct testimony submitted September 1, 2006. Cross examined December 7, 2006.

"In the Matter of the Application of Arizona Public Service Company for a Hearing to Determine the Fair Value of the Utility Property for Ratemaking Purposes, to Fix a Just and Reasonable Rate of Return Thereon, To Approve Rate Schedules Designed to Develop Such Return, and to Amend Decision No. 67744, **Arizona** Corporation Commission," Docket No. E-01345A-05-0816. Direct testimony submitted August 18, 2006 (revenue requirements) and September 1, 2006 (cost-of-service/rate design). Surrebuttal testimony submitted September 27, 2006. Cross examined November 7, 2006.

"Re: The Tariff Sheets Filed by Public Service Company of Colorado with Advice Letter No 1454 – Electric," **Colorado** Public Utilities Commission, Docket No. 06S-234EG. Answer testimony submitted August 18, 2006.

"Portland General Electric General Rate Case Filing," Public Utility Commission of **Oregon,** Docket No. UE-180. Direct testimony submitted August 9, 2006. Joint testimony regarding stipulation submitted August 22, 2006.

"2006 Puget Sound Energy General Rate Case," **Washington** Utilities and Transportation Commission, Docket Nos. UE-060266 and UG-060267. Response testimony submitted July 19, 2006. Joint testimony regarding stipulation submitted August 23, 2006.

"In the Matter of PacifiCorp, dba Pacific Power & Light Company, Request for a General Rate Increase in the Company's Oregon Annual Revenues," Public Utility Commission of **Oregon**, Docket No. UE-179. Direct testimony submitted July 12, 2006. Joint testimony regarding stipulation submitted August 21, 2006.

"Petition of Metropolitan Edison Company for Approval of a Rate Transition Plan," **Pennsylvania** Public Utilities Commission, Docket Nos. P-00062213 and R-00061366; "Petition of Pennsylvania Electric Company for Approval of a Rate Transition Plan," Docket Nos. P-0062214 and R-00061367; Merger Savings Remand Proceeding, Docket Nos. A-110300F0095 and A-110400F0040. Direct testimony submitted July 10, 2006. Rebuttal testimony submitted August 8, 2006. Surrebuttal testimony submitted August 18, 2006. Cross examined August 30, 2006.

"In the Matter of the Application of PacifiCorp for approval of its Proposed Electric Rate Schedules & Electric Service Regulations," **Utah** Public Service Commission, Docket No. 06-035-21. Direct testimony submitted June 9, 2006 (Test Period). Surrebuttal testimony submitted July 14, 2006.

"Joint Application of Questar Gas Company, the Division of Public Utilities, and Utah Clean Energy for the Approval of the Conservation Enabling Tariff Adjustment Option and Accounting Orders," **Utah** Public Service Commission, Docket No. 05-057-T01. Direct testimony submitted May 15, 2006. Rebuttal testimony submitted August 8, 2007. Cross examined September 19, 2007.

"Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, Illinois Power Company d/b/a AmerenIP, Proposed General Increase in Rates for Delivery Service (Tariffs Filed December 27, 2005)," **Illinois** Commerce Commission, Docket Nos. 06-0070, 06-0071, 06-0072. Direct testimony submitted March 26, 2006. Rebuttal testimony submitted June 27, 2006.

"In the Matter of Appalachian Power Company and Wheeling Power Company, both dba American Electric Power," Public Service Commission of **West Virginia**, Case No. 05-1278-E-PC-PW-42T. Direct and rebuttal testimony submitted March 8, 2006.

"In the Matter of Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in Minnesota," **Minnesota** Public Utilities Commission, Docket No. G-002/GR-05-1428. Direct testimony submitted March 2, 2006. Rebuttal testimony submitted March 30, 2006. Cross examined April 25, 2006.

"In the Matter of the Application of Arizona Public Service Company for an Emergency Interim Rate Increase and for an Interim Amendment to Decision No. 67744," **Arizona** Corporation Commission, Docket No. E-01345A-06-0009. Direct testimony submitted February 28, 2006. Cross examined March 23, 2006.

"In the Matter of the Applications of Westar Energy, Inc. and Kansas Gas and Electric Company for Approval to Make Certain Changes in Their Charges for Electric Service," State Corporation Commission of **Kansas**, Case No. 05-WSEE-981-RTS. Direct testimony submitted September 9, 2005. Cross examined October 28, 2005.

"In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Recover Costs Associated with the Construction and Ultimate Operation of an Integrated Combined Cycle Electric Generating Facility," Public Utilities Commission of **Ohio**," Case No. 05-376-EL-UNC. Direct testimony submitted July 15, 2005. Cross examined August 12, 2005.

"In the Matter of the Filing of General Rate Case Information by Tucson Electric Power Company Pursuant to Decision No. 62103," **Arizona** Corporation Commission, Docket No. E-01933A-04-0408. Direct testimony submitted June 24, 2005.

"In the Matter of Application of The Detroit Edison Company to Unbundle and Realign Its Rate Schedules for Jurisdictional Retail Sales of Electricity," **Michigan** Public Service Commission, Case No. U-14399. Direct testimony submitted June 9, 2005. Rebuttal testimony submitted July 1, 2005.

"In the Matter of the Application of Consumers Energy Company for Authority to Increase Its Rates for the Generation and Distribution of Electricity and Other Relief," **Michigan** Public Service Commission, Case No. U-14347. Direct testimony submitted June 3, 2005. Rebuttal testimony submitted June 17, 2005.

"In the Matter of Pacific Power & Light, Request for a General Rate Increase in the Company's Oregon Annual Revenues," Public Utility Commission of **Oregon**, Docket No. UE 170. Direct testimony submitted May 9, 2005. Surrebuttal testimony submitted June 27, 2005. Joint testimony regarding partial stipulations submitted June 2005, July 2005, and August 2005.

"In the Matter of the Application of Trico Electric Cooperative, Inc. for a Rate Increase," **Arizona** Corporation Commission, Docket No. E-01461A-04-0607. Direct testimony submitted April 13, 2005. Surrebuttal testimony submitted May 16, 2005. Cross examined May 26, 2005.

"In the Matter of the Application of PacifiCorp for Approval of its Proposed Electric Service Schedules and Electric Service Regulations," **Utah** Public Service Commission, Docket No. 04-035-42. Direct testimony submitted January 7, 2005.

"In the Matter of the Application by Golden Valley Electric Association, Inc., for Authority to Implement Simplified Rate Filing Procedures and Adjust Rates," Regulatory Commission of **Alaska**, Docket No. U-4-33. Direct testimony submitted November 5, 2004. Cross examined February 8, 2005.

"Advice Letter No. 1411 - Public Service Company of Colorado Electric Phase II General Rate Case," **Colorado** Public Utilities Commission, Docket No. 04S-164E. Direct testimony submitted October 12, 2004. Cross-answer testimony submitted December 13, 2004. Testimony withdrawn January 18, 2005, following Applicant's withdrawal of testimony pertaining to TOU rates.

"In the Matter of Georgia Power Company's 2004 Rate Case," **Georgia** Public Service Commission, Docket No. 18300-U. Direct testimony submitted October 8, 2004. Cross examined October 27, 2004.

"2004 Puget Sound Energy General Rate Case," **Washington** Utilities and Transportation Commission, Docket Nos. UE-040641 and UG-040640. Response testimony submitted September 23, 2004. Cross-answer testimony submitted November 3, 2004. Joint testimony regarding stipulation submitted December 6, 2004.

"In the Matter of the Application of PacifiCorp for an Investigation of Interjurisdictional Issues," **Utah** Public Service Commission, Docket No. 02-035-04. Direct testimony submitted July 15, 2004. Cross examined July 19, 2004.

"In the Matter of an Adjustment of the Gas and Electric Rates, Terms and Conditions of Kentucky Utilities Company," **Kentucky** Public Service Commission, Case No. 2003-00434. Direct testimony submitted March 23, 2004. Testimony withdrawn pursuant to stipulation entered May 2004.

"In the Matter of an Adjustment of the Gas and Electric Rates, Terms and Conditions of Louisville Gas and Electric Company," **Kentucky** Public Service Commission, Case No. 2003-00433. Direct testimony submitted March 23, 2004. Testimony withdrawn pursuant to stipulation entered May 2004.

"In the Matter of the Application of Idaho Power Company for Authority to Increase Its Interim and Base Rates and Charges for Electric Service," **Idaho** Public Utilities Commission, Case No. IPC-E-03-13. Direct testimony submitted February 20, 2004. Rebuttal testimony submitted March 19, 2004. Cross examined April 1, 2004.

"In the Matter of the Applications of the Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company for Authority to Continue and Modify Certain Regulatory Accounting Practices and Procedures, for Tariff Approvals and to Establish Rates and Other Charges, Including Regulatory Transition Charges Following the Market Development Period," Public Utilities Commission of **Ohio**, Case No. 03-2144-EL-ATA. Direct testimony submitted February 6, 2004. Cross examined February 18, 2004.

"In the Matter of the Application of Arizona Public Service Company for a Hearing to Determine the Fair Value of the Utility Property of the Company for Ratemaking Purposes, To Fix a Just and Reasonable Rate of Return Thereon, To Approve Rate Schedules Designed to Develop Such Return, and For Approval of Purchased Power Contract," **Arizona** Corporation Commission, Docket No. E-01345A-03-0437. Direct testimony submitted February 3, 2004. Rebuttal testimony submitted March 30, 2004. Direct testimony regarding stipulation submitted September 27, 2004. Responsive / Clarifying testimony regarding stipulation submitted October 25, 2004. Cross examined November 8-10, 2004 and November 29-December 3, 2004.

"In the Matter of Application of the Detroit Edison Company to Increase Rates, Amend Its Rate Schedules Governing the Distribution and Supply of Electric Energy, etc.," **Michigan** Public Service Commission, Case No. U-13808. Direct testimony submitted December 12, 2003 (interim request) and March 5, 2004 (general rate case).

"In the Matter of PacifiCorp's Filing of Revised Tariff Schedules," Public Utility Commission of **Oregon**, Docket No. UE-147. Joint testimony regarding stipulation submitted August 21, 2003.

"Petition of PSI Energy, Inc. for Authority to Increase Its Rates and Charges for Electric Service, etc.," **Indiana** Utility Regulatory Commission, Cause No. 42359. Direct testimony submitted August 19, 2003. Cross examined November 5, 2003.

"In the Matter of the Application of Consumers Energy Company for a Financing Order Approving the Securitization of Certain of its Qualified Cost," **Michigan** Public Service Commission, Case No. U-13715. Direct testimony submitted April 8, 2003. Cross examined April 23, 2003.

"In the Matter of the Application of Arizona Public Service Company for Approval of Adjustment Mechanisms," **Arizona** Corporation Commission, Docket No. E-01345A-02-0403. Direct testimony submitted February 13, 2003. Surrebuttal testimony submitted March 20, 2003. Cross examined April 8, 2003.

"Re: The Investigation and Suspension of Tariff Sheets Filed by Public Service Company of Colorado, Advice Letter No. 1373 – Electric, Advice Letter No. 593 – Gas, Advice Letter No. 80 – Steam," **Colorado** Public Utilities Commission, Docket No. 02S-315 EG. Direct testimony submitted November 22, 2002. Cross-answer testimony submitted January 24, 2003.

"In the Matter of the Application of The Detroit Edison Company to Implement the Commission's Stranded Cost Recovery Procedure and for Approval of Net Stranded Cost Recovery Charges," **Michigan** Public Service Commission, Case No. U-13350. Direct testimony submitted November 12, 2002.

"Application of South Carolina Electric & Gas Company: Adjustments in the Company's Electric Rate Schedules and Tariffs," Public Service Commission of **South Carolina**, Docket No. 2002-223-E. Direct testimony submitted November 8, 2002. Surrebuttal testimony submitted November 18, 2002. Cross examined November 21, 2002.

"In the Matter of the Application of Questar Gas Company for a General Increase in Rates and Charges," **Utah** Public Service Commission, Docket No. 02-057-02. Direct testimony submitted August 30, 2002. Rebuttal testimony submitted October 4, 2002.

"The Kroger Co. v. Dynegy Power Marketing, Inc.," **Federal Energy Regulatory Commission**, EL02-119-000. Confidential affidavit filed August 13, 2002.

"In the matter of the application of Consumers Energy Company for determination of net stranded costs and for approval of net stranded cost recovery charges," **Michigan** Public Service Commission, Case No. U-13380. Direct testimony submitted August 9, 2002. Rebuttal testimony submitted August 30, 2002. Cross examined September 10, 2002.

"In the Matter of the Application of Public Service Company of Colorado for an Order to Revise Its Incentive Cost Adjustment," **Colorado** Public Utilities Commission, Docket 02A-158E. Direct testimony submitted April 18, 2002.

"In the Matter of the Generic Proceedings Concerning Electric Restructuring Issues," **Arizona** Corporation Commission, Docket No. E-00000A-02-0051, "In the Matter of Arizona Public Service Company's Request for Variance of Certain Requirements of A.A.C. R14-2-1606," Docket No. E-01345A-01-0822, "In the Matter of the Generic Proceeding Concerning the Arizona Independent Scheduling Administrator," Docket No. E-00000A-01-0630, "In the Matter of Tucson Electric Power Company's Application for a Variance of Certain Electric Competition Rules Compliance Dates," Docket No. E-01933A-02-0069, "In the Matter of the Application of Tucson Electric Power Company for Approval of its Stranded Cost Recovery," Docket No. E-01933A-98-0471. Direct testimony submitted March 29, 2002 (APS variance request); May 29, 2002 (APS Track A proceeding/market power issues); and July 28, 2003 (Arizona ISA). Rebuttal

testimony submitted August 29, 2003 (Arizona ISA). Cross examined June 21, 2002 (APS Track A proceeding/market power issues) and September 12, 2003 (Arizona ISA).

"In the Matter of Savannah Electric & Power Company's 2001 Rate Case," **Georgia** Public Service Commission, Docket No. 14618-U. Direct testimony submitted March 15, 2002. Cross examined March 28, 2002.

"Nevada Power Company's 2001 Deferred Energy Case," Public Utilities Commission of **Nevada**, PUCN 01-11029. Direct testimony submitted February 7, 2002. Cross examined February 21, 2002.

"2001 Puget Sound Energy Interim Rate Case," **Washington** Utilities and Transportation Commission, Docket Nos. UE-011570 and UE-011571. Direct testimony submitted January 30, 2002. Cross examined February 20, 2002.

"In the Matter of Georgia Power Company's 2001 Rate Case," **Georgia** Public Service Commission, Docket No. 14000-U. Direct testimony submitted October 12, 2001. Cross examined October 24, 2001.

"In the Matter of the Application of PacifiCorp for Approval of Its Proposed Electric Rate Schedules and Electric Service Regulations," **Utah** Public Service Commission, Docket No. 01-35-01. Direct testimony submitted June 15, 2001. Rebuttal testimony submitted August 31, 2001.

"In the Matter of Portland General Electric Company's Proposal to Restructure and Reprice Its Services in Accordance with the Provisions of SB 1149," Public Utility Commission of **Oregon**, Docket No. UE-115. Direct testimony submitted February 20, 2001. Rebuttal testimony submitted May 4, 2001. Joint testimony regarding stipulation submitted July 27, 2001.

"In the Matter of the Application of APS Energy Services, Inc. for Declaratory Order or Waiver of the Electric Competition Rules," **Arizona** Corporation Commission, Docket No.E-01933A-00-0486. Direct testimony submitted July 24, 2000.

"In the Matter of the Application of Questar Gas Company for an Increase in Rates and Charges," **Utah** Public Service Commission, Docket No. 99-057-20. Direct testimony submitted April 19, 2000. Rebuttal testimony submitted May 24, 2000. Surrebuttal testimony submitted May 31, 2000. Cross examined June 6 & 8, 2000.

"In the Matter of the Application of Columbus Southern Power Company for Approval of Electric Transition Plan and Application for Receipt of Transition Revenues," Public Utility Commission of **Ohio**, Case No. 99-1729-EL-ETP; "In the Matter of the Application of Ohio Power Company for Approval of Electric Transition Plan and Application for Receipt of

Transition Revenues," Public Utility Commission of **Ohio**, Case No. 99-1730-EL-ETP. Direct testimony prepared, but not submitted pursuant to settlement agreement effected May 2, 2000.

"In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues," Public Utility Commission of **Ohio**, Case No. 99-1212-EL-ETP. Direct testimony prepared, but not submitted pursuant to settlement agreement effected April 11, 2000.

"2000 Pricing Process," **Salt River Project** Board of Directors, oral comments provided March 6, 2000 and April 10, 2000.

"Tucson Electric Power Company vs. Cyprus Sierrita Corporation," **Arizona** Corporation Commission, Docket No. E-000001-99-0243. Direct testimony submitted October 25, 1999. Cross examined November 4, 1999.

"Application of Hildale City and Intermountain Municipal Gas Association for an Order Granting Access for Transportation of Interstate Natural Gas over the Pipelines of Questar Gas Company for Hildale, Utah," **Utah** Public Service Commission, Docket No. 98-057-01. Rebuttal testimony submitted August 30, 1999.

"In the Matter of the Application by Arizona Electric Power Cooperative, Inc. for Approval of Its Filing as to Regulatory Assets and Transition Revenues," **Arizona** Corporation Commission, Docket No. E-01773A-98-0470. Direct testimony submitted July 30, 1999. Cross examined February 28, 2000.

"In the Matter of the Application of Tucson Electric Power Company for Approval of its Plan for Stranded Cost Recovery," **Arizona** Corporation Commission, Docket No. E-01933A-98-0471; "In the Matter of the Filing of Tucson Electric Power Company of Unbundled Tariffs Pursuant to A.A.C. R14-2-1601 et seq.," Docket No. E-01933A-97-0772; "In the Matter of the Competition in the Provision of Electric Service Throughout the State of Arizona," Docket No. RE-00000C-94-0165. Direct testimony submitted June 30, 1999. Rebuttal testimony submitted August 6, 1999. Cross examined August 11-13, 1999.

"In the Matter of the Application of Arizona Public Service Company for Approval of its Plan for Stranded Cost Recovery," **Arizona** Corporation Commission, Docket No. E-01345A-98-0473; "In the Matter of the Filing of Arizona Public Service Company of Unbundled Tariffs Pursuant to A.A.C. R14-2-1601 et seq.," Docket No. E-01345A-97-0773; "In the Matter of the Competition in the Provision of Electric Service Throughout the State of Arizona," Docket No. RE-00000C-94-0165. Direct testimony submitted June 4, 1999. Rebuttal testimony submitted July 12, 1999. Cross examined July 14, 1999.

"In the Matter of the Application of Tucson Electric Power Company for Approval of its Plan for Stranded Cost Recovery," **Arizona** Corporation Commission, Docket No. E-01933A-98-0471; "In the Matter of the Filing of Tucson Electric Power Company of Unbundled Tariffs Pursuant to A.A.C. R14-2-1601 et seq.," Docket No. E-01933A-97-0772; "In the Matter of the Application of Arizona Public Service Company for Approval of its Plan for Stranded Cost Recovery," Docket No. E-01345A-98-0473; "In the Matter of the Filing of Arizona Public Service Company of Unbundled Tariffs Pursuant to A.A.C. R14-2-1601 et seq.," Docket No. E-01345A-97-0773; "In the Matter of the Competition in the Provision of Electric Service Throughout the State of Arizona," Docket No. RE-00000C-94-0165. Direct testimony submitted November 30, 1998.

"Hearings on Pricing," **Salt River Project** Board of Directors, written and oral comments provided November 9, 1998.

"Hearings on Customer Choice," **Salt River Project** Board of Directors, written and oral comments provided June 22, 1998; June 29, 1998; July 9, 1998; August 7, 1998; and August 14, 1998.

"In the Matter of the Competition in the Provision of Electric Service Throughout the State of Arizona," **Arizona** Corporation Commission, Docket No. U-0000-94-165. Direct and rebuttal testimony filed January 21, 1998. Second rebuttal testimony filed February 4, 1998. Cross examined February 25, 1998.

"In the Matter of Consolidated Edison Company of New York, Inc.'s Plans for (1) Electric Rate/Restructuring Pursuant to Opinion No. 96-12; and (2) the Formation of a Holding Company Pursuant to PSL, Sections 70, 108, and 110, and Certain Related Transactions," **New York** Public Service Commission, Case 96-E-0897. Direct testimony filed April 9, 1997. Cross examined May 5, 1997.

"In the Matter of the Petition of Sunnyside Cogeneration Associates for Enforcement of Contract Provisions," **Utah** Public Service Commission, Docket No. 96-2018-01; "In the Matter of the Application of Rocky Mountain Power for an Order Approving an Amendment to Its Power Purchase Agreement with Sunnyside Cogeneration Associates," Docket Nos. 05-035-46, and 07-035-99. Direct testimony submitted July 8, 1996. Oral testimony provided March 18, 2008.

"In the Matter of the Application of PacifiCorp, dba Pacific Power & Light Company, for Approval of Revised Tariff Schedules and an Alternative Form of Regulation Plan," **Wyoming** Public Service Commission, Docket No. 20000-ER-95-99. Direct testimony submitted April 8, 1996.

"In the Matter of the Application of Mountain Fuel Supply Company for an Increase in Rates and Charges," **Utah** Public Service Commission, Case No. 95-057-02. Direct testimony submitted

June 19, 1995. Rebuttal testimony submitted July 25, 1995. Surrebuttal testimony submitted August 7, 1995.

"In the Matter of the Investigation of the Reasonableness of the Rates and Tariffs of Mountain Fuel Supply Company," **Utah** Public Service Commission, Case No. 89-057-15. Direct testimony submitted July 1990. Surrebuttal testimony submitted August 1990.

"In the Matter of the Review of the Rates of Utah Power and Light Company pursuant to The Order in Case No. 87-035-27," **Utah** Public Service Commission, Case No. 89-035-10. Rebuttal testimony submitted November 15, 1989. Cross examined December 1, 1989 (rate schedule changes for state facilities).

"In the Matter of the Application of Utah Power & Light Company and PC/UP&L Merging Corp. (to be renamed PacifiCorp) for an Order Authorizing the Merger of Utah Power & Light Company and PacifiCorp into PC/UP&L Merging Corp. and Authorizing the Issuance of Securities, Adoption of Tariffs, and Transfer of Certificates of Public Convenience and Necessity and Authorities in Connection Therewith," **Utah** Public Service Commission, Case No. 87-035-27; Direct testimony submitted April 11, 1988. Cross examined May 12, 1988 (economic impact of UP&L merger with PacifiCorp).

"In the Matter of the Application of Mountain Fuel Supply Company for Approval of Interruptible Industrial Transportation Rates," **Utah** Public Service Commission, Case No. 86-057-07. Direct testimony submitted January 15, 1988. Cross examined March 30, 1988.

"In the Matter of the Application of Utah Power and Light Company for an Order Approving a Power Purchase Agreement," **Utah** Public Service Commission, Case No. 87-035-18. Oral testimony delivered July 8, 1987.

"Cogeneration: Small Power Production," **Federal Energy Regulatory Commission**, Docket No. RM87-12-000. Statement on behalf of State of Utah delivered March 27, 1987, in San Francisco.

"In the Matter of the Investigation of Rates for Backup, Maintenance, Supplementary, and Standby Power for Utah Power and Light Company," **Utah** Public Service Commission, Case No. 86-035-13. Direct testimony submitted January 5, 1987. Case settled by stipulation approved August 1987.

"In the Matter of the Application of Sunnyside Cogeneration Associates for Approval of the Cogeneration Power Purchase Agreement," **Utah** Public Service Commission, Case No. 86-2018-01. Rebuttal testimony submitted July 16, 1986. Cross examined July 17, 1986.

"In the Matter of the Investigation of Demand-Side Alternatives to Capacity Expansion for Electric Utilities," **Utah** Public Service Commission, Case No. 84-999-20. Direct testimony submitted June 17, 1985. Rebuttal testimony submitted July 29, 1985. Cross examined August 19, 1985.

"In the Matter of the Implementation of Rules Governing Cogeneration and Small Power Production in Utah," **Utah** Public Service Commission, Case No. 80-999-06, pp. 1293-1318. Direct testimony submitted January 13, 1984 (avoided costs), May 9, 1986 (security for levelized contracts) and November 17, 1986 (avoided costs). Cross-examined February 29, 1984 (avoided costs), April 11, 1985 (standard form contracts), May 22-23, 1986 (security for levelized contracts) and December 16-17, 1986 (avoided costs).

OTHER RELATED ACTIVITY

Participant, Wyoming Load Growth Collaborative, March 2008 to present.

Participant, Oregon Direct Access Task Force (UM 1081), May 2003 to November 2003.

Participant, Michigan Stranded Cost Collaborative, March 2003 to March 2004.

Member, Arizona Electric Competition Advisory Group, December 2002 to present.

Board of Directors, ex-officio, Desert STAR RTO, September 1999 to February 2002.

Member, Advisory Committee, Desert STAR RTO, September 1999 to February 2002. Acting Chairman, October 2000 to February 2002.

Board of Directors, Arizona Independent Scheduling Administrator Association, October 1998 to present.

Acting Chairman, Operating Committee, Arizona Independent Scheduling Administrator Association, October 1998 to June 1999.

Member, Desert Star ISO Investigation Working Groups: Operations, Pricing, and Governance, April 1997 to December 1999. Legal & Negotiating Committee, April 1999 to December 1999.

Participant, Independent System Operator and Spot Market Working Group, Arizona Corporation Commission, April 1997 to September 1997.

Participant, Unbundled Services and Standard Offer Working Group, Arizona Corporation Commission, April 1997 to October 1997.

Participant, Customer Selection Working Group, Arizona Corporation Commission, March 1997 to September 1997.

Member, Stranded Cost Working Group, Arizona Corporation Commission, March 1997 to September 1997.

Member, Electric System Reliability & Safety Working Group, Arizona Corporation Commission, November 1996 to September 1998.

Chairman, Salt Palace Renovation and Expansion Committee, Salt Lake County/State of Utah/Salt Lake City, multi-government entity responsible for implementation of planning, design, finance, and construction of an $85 million renovation of the Salt Palace Convention Center, Salt Lake City, Utah, May 1991 to December 1994.

State of Utah Representative, Committee on Regional Electric Power Cooperation, a joint effort of the Western Interstate Energy Board and the Western Conference of Public Service Commissioners, January 1987 to December 1990.

Member, Utah Governor's Economic Coordinating Committee, January 1987 to December 1990.

Chairman, Standard Contract Task Force, established by Utah Public Service Commission to address contractual problems relating to qualifying facility sales under PURPA, March 1986 to December 1990.

Chairman, Load Management and Energy Conservation Task Force, Utah Public Service Commission, August 1985 to December 1990.

Alternate Delegate for Utah, Western Interstate Energy Board, Denver, Colorado, August 1985 to December 1990.

Articles Editor, Economic Forum, September 1980 to August 1981.

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE AND THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Joint Complainants, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT CORP. Respondent.	Docket No. UE-_____ JOINT COMPLAINT OF ICNU AND PUBLIC COUNSEL

I. PARTIES

1 Complainant Public Counsel Section of the Washington State Attorney General's Office (Public Counsel) is the statutory party charged with representing "the people of the state of Washington" under RCW 80.01.100 and 80.04.510. Public Counsel, thus, represents residential and small business customers of PacifiCorp, d/b/a Pacific Power & Light (PacifiCorp or the Company) in rate case proceedings, including *WUTC v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket No. UE-090205 (*2009 GRC*), and the current rate case. Public Counsel is authorized by the provisions of RCW 80.01.100, 80.04.110, and 80.04.510 to file complaints with the Commission. The full name and address of Public Counsel and Public Counsel's attorney is:

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Washington State Attorney General's Office
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Complainant Industrial Customers of Northwest Utilities (ICNU) was an intervening party to the *2009 GRC* pursuant to WAC 480-07-340 and -355.[1] Pursuant to the same rules, ICNU also is an intervening party in the current general rate case. ICNU is an incorporated, non-profit association of large industrial electric customers in the Pacific Northwest and represents some of PacifiCorp's largest customers, including its largest customer in Washington. The full names and addresses of ICNU and ICNU's attorneys are:

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Respondent PacifiCorp is a "public service company" and an "electrical company" as those terms are defined in RCW 80.04.010 and as those terms are otherwise used in Title 80 RCW. PacifiCorp is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation, and is subject to the jurisdiction of the Washington Utilities and Transportation Commission (the Commission). The full names and addresses of PacifiCorp and PacifiCorp's attorneys are:

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[1] *2009 GRC*, Prehearing Conference Order (Order No. 04), ¶ 4 (Mar. 24, 2009).

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II. RULES AND STATUTES

2 Statutes and rules that may be at issue in this complaint include: RCW 35.04.452, 80.04.130, 80.04.210, 80.04.220, 80.40.230, and 80.28.010, and WAC 480-07-405 and 480-07-540.

III. INTRODUCTION

3 Pursuant to RCW 80.04.110 and WAC 480-07-370, ICNU and Public Counsel bring this Complaint against PacifiCorp, and request that the Commission provide customers the full benefit of the actual REC sales revenue covered by the *2009 GRC* Final Order and order a refund to customers as described below. While ICNU and Public Counsel request that the Commission open a new docket for this Complaint, this Complaint is integrally related to both the *2009 GRC* and to PacifiCorp's current general rate case, *WUTC v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket No. UE-100749 (*2010 GRC*). Alternatively, ICNU and Public Counsel request the Commission amend its Final Order in the *2009 GRC*, approving an all-party settlement filed in that case, to reflect the actual level of 2010 revenue PacifiCorp knew or should have known that it would receive during 2010 at the time the settlement was negotiated.

4 Information received by ICNU and Public Counsel after entry of the Final Order in the *2009 GRC* indicates that, in violation of state law and Commission rules, PacifiCorp failed to disclose complete and accurate information, and failed to meet its burden of providing information through discovery to demonstrate the reasonableness of the proposed REC

adjustment as required by RCW 34.05.452, RCW 80.04.130(4), WAC 480-07-540, WAC 480-07-405(7), and WAC 480-07-405(8). These violations resulted in PacifiCorp overstating its revenue requirement and thereby charging and collecting unjust, unfair, and unreasonable rates as required by RCW 80.28.010. Specifically, PacifiCorp knew that its 2009 and 2010 sales of renewable energy credits (REC) would exceed the estimates provided in its pro forma adjustment. PacifiCorp failed to disclose this information, despite numerous obligations to do so. Public Counsel and ICNU would not have entered into the settlement under the terms it contained if they had been provided accurate and complete information. Moreover, it is doubtful whether the Commission would have approved the settlement if it had known about the REC revenues the settlement allowed PacifiCorp to withhold from customers.[2/] Thus, the revenue received for RECs in excess of the estimates provided by PacifiCorp in its pro forma adjustment should be refunded to customers.

5 The allegations contained in this complaint are supported by information and belief, and more specific data will be provided upon discovery. Upon information and belief, the actual REC sales contracts entered into by PacifiCorp during 2009 generated REC revenue far in excess of the 2010 revenue estimates represented by PacifiCorp.[3/] ICNU and Public Counsel anticipate requesting information to support these allegations through discovery in this docket as soon as a formal adjudicative proceeding is initiated.

2/ PacifiCorp's customers, not its shareholder, are entitled to REC revenues. *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*, Final Order (Order No. 03), Docket. No. UE-070725, ¶¶ 41-47 (recognizing that, absent unusual or extraordinary circumstances, REC revenues should be credited to ratepayers). PacifiCorp understands this principle, stating in rebuttal testimony in its current rate case: "customers are generally entitled to a revenue credit for REC sales. The Company does not contest this premise." *2010 GRC*, Rebuttal Testimony of Gregory N. Duvall, Exh. No. GND-5T, p. 8 (Nov. 5, 2010).

3/ *See* Exhibit B (Affidavit of Melinda J. Davison, ¶ 6).

IV. JURISDICTION

6 The Commission has jurisdiction over this Complaint and the Parties pursuant to RCW Chapters 80.01, 80.04, and 80.28, including, specifically: RCW 80.01.040 (general powers and duties of the Commission), 80.04.110, 80.28.010, and 80.28.020. Under RCW 80.04.210, the Commission may, after approving and adopting a settlement, abrogate the terms of that settlement.[4/] Under RCW 80.04.220 and 80.04.230, the Commission may upon complaint of any party order a public service company to refund any amounts, with interest, that it finds were excessive or charged in excess of the lawful rate, regardless of whether the excess amounts were charged before or after the filing of the complaint.[5/] While ICNU and Public Counsel do not believe this Complaint triggers the twenty-five signature requirement, in the event that the Commission determines that the signature requirement of RCW 80.04.110(1) applies to ICNU's participation, the signatures of over twenty-five PacifiCorp customers in included as Exhibit A. Independently, Public Counsel has authority to initiate this complaint on behalf of the people of the state of Washington who are customers of PacifiCorp under RCW 80.01.100 and 80.04.510, which charge Public Counsel with the duty "generally to see that all laws affecting any of the persons or corporations herein enumerated are complied with, and that all laws, the enforcement of which devolves upon the commission, are enforced, and to that end he is authorized to *institute, prosecute and defend all necessary actions and proceedings.*"[6/]

V. STATEMENT OF FACTS

7 On February 9, 2009, PacifiCorp filed a general rate case requesting to increase

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4/ *Washington State Attorney General's Office v. WUTC*, 128 Wn.App 818 (2005).

Washington retail electric rates beginning January 1, 2010 (*2009 GRC*).[7] The test period for the *2009 GRC* was the 2008 calendar year, and the rate effective period was the twelve months ending December 2010. In the Company's direct case in the *2009 GRC*, witness R. Bryce Dalley submitted testimony proposing an adjustment to "add[] the Washington-allocated pro forma green tag revenues for the rate effective period, twelve-months ending December 2010."[8] According to Mr. Dalley, the projected 2010 Washington revenues were $657,755.[9] In exhibits accompanying his testimony, Mr. Dalley indicated that 2010 REC sales prices would be $3.50 per-REC.[10] Mr. Dalley made the pro forma adjustment described above after removing $983,142 in actual test year REC revenues. In sum, Mr. Dalley's combined REC adjustments had the effect of increasing PacifiCorp's overall revenue requirement request by at least $325,387.[11] Mr. Dalley's testimony and exhibits were admitted into the record.[12]

8 On February 24, 2009, ICNU sent PacifiCorp data request 2.1 (ICNU 2.1) asking the following: "[P]lease provide the actual green tag sales and revenue received by PacifiCorp since 2005. Please update this response as PacifiCorp executes additional sales throughout this proceeding."[13]

9 PacifiCorp sent an initial response to ICNU 2.1 on March 10, 2009. The narrative

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5/ RCW 80.04.220. RCW 80.04.240 places a six-month statute of limitations on claims filed under RCW 80.04.200. In this case, ICNU and Public Counsel's claim for refunds accrued on or after July 8, 2010, *i.e.*, the date on which ICNU and Public Counsel received the actual sales contracts discussed below. (Public Counsel first had access to the actual sales contracts on September 9, 2010). *See AT&T Communications et al. v. Qwest Corporation,* Docket No. UT-051682, Initial Order (Order No. 03), ¶¶ 18-21 (Feb. 10, 2006) (holding that the complainant's claim for refund accrued as of the day that the contracts upon which their claim relied were made public and thus available to them).

6/ Emphasis added.

7/ *2009 GRC*, Direct Testimony of Richard P. Reiten, Exh. No. RPR-1T, p. 2:13-15.

8/ *2009 GRC*, Direct Testimony of R. Bryce Dalley, Exh. No. RBD-1T, p. 14:15-17.

9/ *2009 GRC*, Direct Testimony of R. Bryce Dalley, Exh. No. RBD-1T; Exh. No. RBD-3, p. 3.7.

10/ *2009 GRC*, Exh. No. RBD-3, p. 3.7.1.

11/ *Id.*

12/ *2009 GRC*, TR. 0073:23-25 and 0140:8-20.

13/ *See* Exhibit C.

response refers to a confidential attachment, but does not provide any explanation of the attachment, nor does it indicate that any sales contracts were not included in the attachment.[14/] The attachment marked as confidential consists of an excel spreadsheet showing the volume, price, and total revenue for REC sales by month from 2005 through 2009. The "deal dates" of the sales span from 2005 through February 2009. The response includes projected revenue for the months beyond March 2009 (*i.e.*, the time of the response). The inclusion of projected revenue shows that PacifiCorp understood the data request to require information regarding all executed sales contracts rather than merely revenue received to date.

10 The response to ICNU 2.1 indicates that, during 2008, PacifiCorp entered into REC sales for that year and 2009 at materially different prices than the $3.50 relied upon for its pro forma adjustment.[15/]

11 On July 2, 2009, PacifiCorp provided a supplemental response to ICNU 2.1, also marked confidential. The narrative response states only that the confidential attachment "provides data to June 15, 2009." The narrative does not provide any explanation of the attachment, nor does it indicate that any sales contracts were not included in the attachment. Like the initial response, the attachment consists of an excel spreadsheet showing the volume, price, and total revenue for REC sales. The "deal dates" of the sales span from 2005 through May 2009. The resources from which sales were made include various types of generation. The response includes projected revenue for months beyond June 15, 2009 (i.e., the date to which PacifiCorp stated the response was current) through December 2009. Again, the inclusion of projected revenue shows that PacifiCorp understood the data request to require information regarding all executed sales contracts.

14/ *See* Exhibit B (Affidavit of Melinda J. Davison, ¶ 5).
15/ *Id.*, ¶ 6.

12 Upon information and belief, the supplemental response to ICNU 2.1 fails to include other sales through 2009. PacifiCorp provided no additional information in response to data requests on this topic, suggesting that this data was not comprehensive.

13 PacifiCorp did not provide any further supplemental responses to ICNU 2.1.

14 ICNU sent a second data request to PacifiCorp on February 24, 2009, ICNU 2.2, attached as Exhibit C. This request asked: "[P]lease provide all documents to support the pro forma [REC] sales price." The Company sent an initial response on March 10, 2009, stating that the information was highly confidential and would only be provided subject to special arrangements. On March 19, 2009, the Company revised its initial response to designate the information as only confidential. The narrative response simply refers to the confidential attachment and does not provide any explanation of the data in the attachment. The confidential attachment consists of an excel spreadsheet listing details about sales from March 2006-2007.

15 On August 3, 2009, the parties began settlement discussions. These discussions were informed by the Company's initial filing and discovery responses, including the responses to ICNU 2.1 and 2.2.[16/] No additional data was provided regarding 2009 or 2010 REC sales prices or revenues. The parties filed a proposed all-party settlement on August 25, 2009.[17/] The settlement included projected REC revenues of $657,755 for the rate effective period reflecting the Company's sales volume and price assertions made in Mr. Dalley's testimony and exhibits and in discovery responses.[18/]

16 After an evidentiary hearing on October 29, 2009, the Commission approved the

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16/ Exhibit B (*Id.*, ¶ 5); Exhibit D (Affidavit of Sarah A. Shifley, ¶ 3).

17/ As described in the supporting Joint Testimony of various parties, the treatment of REC revenue was an important issue in the settlement of the *2009 GRC*. Testimony of Robert M. Meek in Support of the Settlement Stipulation on Behalf of ICNU, Exh. RMM-1T, p. 3; Testimony of Donna Ramas in Support of the Settlement Stipulation on Behalf of Public Counsel, Exh. DR-1T, pp. 4-5; and Testimony of Thomas E. Schooley, Exh. TES-1T, pp. 19-20. PacifiCorp did not discuss the amount of REC revenues included in rates in its supporting testimony.

proposed settlement without amendment.[19] The rates reflecting $657,755 in REC revenue went into effect on January 1, 2010,[20] and remained in place through 2010.

17 On May 4, 2010, PacifiCorp filed another general rate case, the *2010 GRC*.[21]

18 Through discovery in the *2010 GRC*, ICNU and Public Counsel have obtained the actual contracts for past, current, and future REC sales, including the contracts that were not produced in discovery during the *2009 GRC*.[22] This information has been designated by the Company as highly confidential. Upon information and belief that will be supplemented upon discovery, ICNU and Public Counsel will demonstrate that PacifiCorp's REC sales during the rate effective period were much higher than the pro forma adjustment, and PacifiCorp had reason to know of this discrepancy at the time of settlement of the *2009 GRC*.

A. First Cause of Action -- Violation of RCW 34.05.452 and 80.04.130 and WAC 480-07-540 – PacifiCorp's Proposed Pro Forma Revenue Adjustment was Inconsistent with Known and Measurable Rate Effective Period Revenues

19 RCW 34.05.452 provides that all testimony offered to the Commission by witnesses, either orally or in writing, must be made under oath or affirmation, *i.e.*, under penalty of perjury. RCW 80.04.130(4) and WAC 480-07-540 require that a utility seeking a rate increase bear the burden of proving that the increase is just and reasonable. Thus, the burden of showing that a proposed pro forma adjustment increasing rates is proper falls on the Company, and the

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18/ Exhibit E (*2009 GRC*, Settlement Stipulation, ¶ 11 (Aug. 25, 2009)).
19/ *2009 GRC*, Final Order (Order No. 09) (Dec. 16, 2009).
20/ Exhibit E (*2009 GRC*, Settlement Stipulation, ¶ 11 (Aug. 25, 2009)).
21/ In the most recent rate case, PacifiCorp originally proposed removing $4.78 million in REC revenues generated in 2010 based on the assertion that it will bank all RECs during the rate-effective period for compliance with Washington's newly-implemented renewable portfolio standards (RPS). *2010 GRC*, Direct Testimony of R. Bryce Dalley, Exh. No. RBD-1T, pp. 9-10.
22/ *See* Exhibit B (Affidavit of Melinda J. Davison, ¶ 6).

testimony in support thereof is made under penalty of perjury.[23]

20 Pro forma revenue adjustments are proper when known and measurable fluctuations in revenues will take place during the rate effective period. The "known and measurable" standard requires that a pro forma revenue adjustment not be "an estimate, a projection... or some similar exercise of judgment."[24] When it is available, actual data should be used in place of projections or estimates. When projections are proper, the Commission has stated that such adjustments should be made with a "high degree of analytical rigor."[25]

Upon information and belief, PacifiCorp's proposed pro forma adjustment in the *2009 GRC* did not reflect data within the Company's possession regarding the known and measurable REC sales prices it expected to receive during the rate effective period. PacifiCorp based its pro forma adjustment on 2007 REC prices of $3.50.[26] However, during 2008, PacifiCorp entered into REC sales contracts for that year and 2009 at materially different prices. Despite its awareness of materially different REC prices, PacifiCorp still presented the Commission with a pro forma adjustment based on REC prices far below those in the test period, what it was receiving at the time, or what it could reasonably expect to receive in the rate effective period.

B. Second Cause of Action -- Violation of WAC 480-07-405(7) and RCW 80.28.010 – Failure to Present Accurate and Complete Evidence Resulted in Settlement Approving Unjust, Unreasonable and Unfair Rates

21 The discovery rules governing proceedings before the Commission require that parties

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23/ RCW 80.04.130(4) (stating, "[a]t any hearing involving any change in any schedule, classification, rule, or regulation the effect of which is to increase any rate, charge, rental, or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company").

24/ The Commission has also explained that to be "known," the party supporting a pro forma adjustment must demonstrate that the effect of the event "will be in place during the 12-month period when rates will likely be in effect." *WUTC v. Avista Corp. d/b/a Avista Utilities*, Docket Nos. UE-090134/UG-090135, Final Order (Order No. 10), ¶¶ 45, 51 (ultimately rejecting various pro forma adjustments because the Company "fell short of meeting its obligations under the relevant Commission rules" by presenting estimated instead of actual figures).

25/ *WUTC v. Puget Sound Energy, Inc.*, Docket Nos. UE-090704/UG-090705, Final Order (Order No. 11), ¶ 26.

26/ *2009 GRC*, Exh. No. RBD-3, p. 3.7.1.

promptly provide accurate responses to data requests.[27] PacifiCorp disregarded this obligation, and failed to provide accurate and complete responses to the parties' data requests despite the fact that the Company possessed accurate and complete information. Under RCW 80.28.010, a utility may only collect rates which are just, fair, and reasonable. PacifiCorp's inaccurate and incomplete statements regarding REC prices to parties during the *2009 GRC* resulted in the approval of a settlement which has allowed the Company to charge and collect rates which are not just, fair, and reasonable.

22 In the response to ICNU 2.2, which asked PacifiCorp to "please provide all documents to support the pro forma sales price," the Company provided confidential REC sales data from 2007.[28] However, the Company provided no support for its decision to rely on 2007 sales data, nor did it revise or supplement the response with information regarding the actual price it knew it would receive during 2010 firm executed sales contracts. Notably, the data request did not restrict the timeframe, yet the Company only provided 2007 data.

23 In ICNU 2.1, ICNU expressly asked for the most current REC sales prices and requested that the response be updated at any time a new sale was executed. Upon information and belief, PacifiCorp failed to include in its supplemental response to ICNU 2.1 executed sales contracts for large volumes of Washington-allocated RECs during 2009 and 2010 at higher prices. PacifiCorp did not further supplement its response to ICNU 2.1 at any time during the rest of the case. Thus, neither ICNU nor Public Counsel had any reason to believe at the time of the *2009 GRC* settlement that the Company would be selling RECs at such higher prices than the 2010 sales price PacifiCorp provided to calculate its pro forma adjustment. If ICNU and Public Counsel would have had access to the actual REC data that PacifiCorp had in its possession at

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27/ WAC 480-07-405(7).
28/ Exhibit B (Affidavit of Melinda J. Davison, ¶ 5).

the time of the *2009 GRC* settlement, neither ICNU nor Public Counsel would have signed onto, and supported in front of the Commission, the settlement which forgoes a significant amount of REC revenues. The rates approved in the settlement were, thus, approved on the basis of incomplete and inaccurate information, which did not account for substantial revenue that PacifiCorp knew it would receive during 2009 and 2010.

C. Third Cause of Action -- Violation of WAC 480-07-405(8) – Failure to Supplement Data Responses

24 WAC 480-07-405(8) creates an ongoing duty to provide accurate information to parties in response to data requests. Moreover, the Commission has declared that its "paramount interest is in having a full record with the best available evidence upon which to base its decisions."[29/] As referenced above, ICNU served data requests on PacifiCorp requesting information supporting the calculation of the pro forma REC price used in its initial filing. The Company could have, but chose not to revise its initial filing to correct for misstatements or provide excluded information. Moreover, the Company ignored its obligations to supplement its data responses "upon learning that a response, correct and complete when made, is no longer correct or complete," pursuant to WAC 480-07-405(8) and in accordance with explicit instructions in the parties' data requests.[30/] Finally, the Company could have, and should have, informed parties of its lucrative 2009 and 2010 REC sales contracts during the settlement discussions, or at a minimum during the drafting of the proposed settlement. In sum, PacifiCorp failed to provide the parties and the Commission with accurate information, resulting in an understatement of actual anticipated 2010 REC revenue and the achievement of a settlement based on misleading information.

29/ *WUTC v. Puget Sound Energy, Inc.*, Docket Nos. UE-072300/UG-072301, Order No. 08, ¶ 10 (Apr. 5, 2008).
30/ *See* Exhibit C (ICNU Data Request Instructions).

VI. RELIEF REQUESTED

25 In the *2009 GRC*, PacifiCorp presented the parties and the Commission with information that it knew or should have known was incorrect and incomplete regarding the REC revenues it would be receiving during 2009 and 2010. This resulted in the Company overstating its revenue requirement for the 2010 rate year, and thus, overcharging customers by the amount of REC revenues the Company knew, but did not disclose, it would receive in 2010. Accordingly, ICNU and Public Counsel respectfully request that the Commission take the following actions:

(1) Undertake an investigation of PacifiCorp's records, including all contracts signed before the entry of the Final Order and other information in PacifiCorp's possession regarding REC sales.

(2) Require PacifiCorp to refund to customers the Washington-allocated share of all revenues that PacifiCorp was certain to receive in 2009 and 2010 pursuant to sales contracts finalized and signed prior to the close of the record in the *2009 GRC* in excess of the amount actually reflected in retail rates. The amount of the refund should be based on the results of the Commission's investigation referenced in (1) above and include accrued interest.

(3) Establish an ongoing balancing account to accurately credit customers with the actual REC revenues.

(4) Investigate whether any PacifiCorp employee committed perjury by failing to disclose accurate data on REC revenues.

(5) Alternatively, amend the terms of the Final Order in the *2009 GRC* regarding REC revenues to reflect the actual level of 2010 revenue PacifiCorp knew or should have known that it would receive during 2010 at the time the settlement was negotiated.

Respectfully submitted,

DATED this 6th day of January, 2011.

PUBLIC COUNSEL

/s/ Sarah A. Shifley
Sarah A. Shifley
Assistant Attorney General
Public Counsel Section
800 Fifth Avenue, Suite 2000
Washington State Attorney
General's Office
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DAVISON VAN CLEVE, P.C.

/s/ Melinda J. Davison
Melinda J. Davison
333 S.W. Taylor, Suite 400
Portland, Oregon 97204
(503) 241-7242 telephone
(503) 241-8160 facsimile
mjd@dvclaw.com
On Behalf of the Industrial
Customers of Northwest Utilities and the
Forty-three PacifiCorp Customers Identified
in Exhibit A

Exhibit A

Signed Petition of PacifiCorp Customers

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE AND THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Joint Complainants, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT CORP. Respondent.	Docket No. UE-_____ JOINT COMPLAINT OF ICNU AND PUBLIC COUNSEL

My name is Kirsten Cole. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 254 Edith St
Burbank, WA 99323

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Kirsten M. Cole

January 5, 2011

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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My name is William Waters. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 97 Columbia Rd
Burbank WA 99323

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

January 5, 2011

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My name is NICK NACHBAR. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 1566 BEET RD.
WALLA WALLA, WA 99362

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Nick Nachbar

January 5, 2011

BEFORE THE WASHINGTON
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My name is TOM MEYER. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 2122 HILL CREEK RD
WALLA WALLA, WA

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Tom Meyer

January 5, 2011

BEFORE THE WASHINGTON
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My name is Larry Nelson. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 731 Pearson
Walla Walla, WA 99362

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

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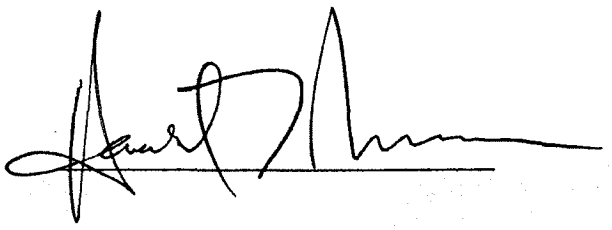
My name is Harold Nunn. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 1040 SW Puff Lane

College Place, WA 99324

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.



January 5, 2011

BEFORE THE WASHINGTON
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My name is Jeremy Collins. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 426 Chase #6
Walla Walla, Wa 99362

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

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My name is Scott L Johanek. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 301 BURDETTE WAY (PO BOX 642)
WALLULA WA 99363

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Scott L Johanek

January 5, 2011

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My name is PATRICK C. WEBB I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 141 Snider Dr.
WALLA WALLA WA.

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

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My name is Bruce Morgan. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 426 School Ave
Walla Walla, WA

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

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My name is Mike Roska. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 127 KENWOOD ST
WALLA WALLA WA

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

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My name is Robert Logsdon. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 946 Frazier dr
Walla Walla WA 99362

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Robert Logsdon

January 5, 2011

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My name is William Gressner. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 234 Columbia
Walla Wa, WA 99363

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

William Gressner

January 5, 2011

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My name is GLENN BARRETT. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 91 WESTBOURNE LP
BURBANK WA, 99323

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Glenn R. Barrett

January 5, 2011

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My name is Christina Olson. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 16448 W Hwy 12
Touchet, WA 99360

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

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My name is Mark Evensen. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 1224 Studebaker PL
Walla Walla Wa

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Mark Evensen

January 5, 2011

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My name is _____Greg Cresci_____. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: ___912 Bonnie Brae_____

___Walla Walla, WA 99362_____

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Greg Cresci

_____

January 5, 2011

BEFORE THE WASHINGTON
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My name is JEFF DEAN. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 13263 Hyway 12
Touchet WA 99360

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

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My name is JOHN M HOLCBROOK I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 151 CHERRY ST
TOUCHET WA 99360

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

January 5, 2011

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My name is Dennis L. Reeser. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 120 Westbourne Loop
Burbank Wa. 99323

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Dennis L. Reeser

BEFORE THE WASHINGTON
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My name is DAVID L. GLESSNER. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 81 GAP WAY P.O. BOX 195
Wallula, Wa. 99363

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

David L Glessner

January 5, 2011

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My name is Shelley Olson. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 61 Sage Rd
Burbank, WA 99323

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Shelley Olson

January 5, 2011

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My name is Clifford Ray. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 354 Douglas wy
wallula WA 99363

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Clifford Ray

January 5, 2011

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE AND THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Joint Complainants, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT CORP. Respondent.	Docket No. UE-_____ JOINT COMPLAINT OF ICNU AND PUBLIC COUNSEL

My name is Nicole Meyers. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 2328 NE Cedar Ave
College Place, WA 99324

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Nicole P. Meyers

January 5, 2011

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE AND THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Joint Complainants, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT CORP. Respondent.	Docket No. UE-_____ JOINT COMPLAINT OF ICNU AND PUBLIC COUNSEL

My name is Eric J. Steffensen. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 105 Kerkhof Lane
Dayton, WA. 99328

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

January 5, 2011

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My name is Pamela L. Floch. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 232 Newtown Rd
Walla Walla WA 99362

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Pamela L Floch

January 5, 2011

BEFORE THE WASHINGTON
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My name is Todd Boulds. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 52 Wayne Ct
Burbank Wa 99323

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Todd Boulds

BEFORE THE WASHINGTON
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My name is Bonnie Larson. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: P.O. Box 715
Wallula, WA 99363

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Bonnie Larson

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE AND THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Joint Complainants, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT CORP. Respondent.	Docket No. UE-_____ JOINT COMPLAINT OF ICNU AND PUBLIC COUNSEL

My name is Richard Hatch. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 245 Baldwin Rd.
Walla Walla Wa. 99362

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

BEFORE THE WASHINGTON
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WASHINGTON STATE ATTORNEY GENERAL'S OFFICE AND THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Joint Complainants, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT CORP. Respondent.	Docket No. UE-_____ JOINT COMPLAINT OF ICNU AND PUBLIC COUNSEL

My name is Robert Logan. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 417 WALLULA AVE.
WALLA WALLA WA. 99362

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Robert Logan

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE AND THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Joint Complainants, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT CORP. Respondent.	Docket No. UE-_____ JOINT COMPLAINT OF ICNU AND PUBLIC COUNSEL

My name is STEVE MERSAITH. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 348 SE DAVIN DR
COLLEGE PLACE, WA 99324

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

January 5, 2011

BEFORE THE WASHINGTON
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My name is WAYNE A. NYE. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 54 PEACH LANE
BURBANK, WA 99323

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Wayne A. Nye

January 5, 2011

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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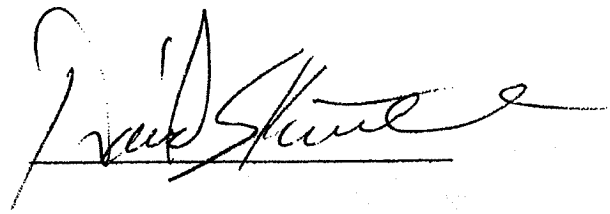
My name is David Skinner. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 386 Columbia Way
Walla Walla WA 99363

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.



January 5, 2011

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE AND THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Joint Complainants, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT CORP. Respondent.	Docket No. UE-_____ JOINT COMPLAINT OF ICNU AND PUBLIC COUNSEL

My name is Coby Harrington. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 196 Douglas way
Walla Wa 99363

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

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BEFORE THE WASHINGTON
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My name is Sadie Linn. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 215 Douglas Way
Walla Walla WA 99363

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Sadie Linn

January 5, 2011

BEFORE THE WASHINGTON
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My name is Harlen Vinyard. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 310 Ross Way
Wallula, WA 99363

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

HWV

January 5, 2011

BEFORE THE WASHINGTON
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WASHINGTON STATE ATTORNEY GENERAL'S OFFICE AND THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Joint Complainants, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT CORP. Respondent.	Docket No. UE-_____ JOINT COMPLAINT OF ICNU AND PUBLIC COUNSEL

My name is Bonnie Dehlhousen, I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 335 Ross Way
Wallula, WA. 99363

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Bonnie Dehlhousen

January 5, 2011

BEFORE THE WASHINGTON
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My name is Evelyn Charles Williams I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 361 Burdette Way
Wallula, WA 99363

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

_____

January 5, 2011

BEFORE THE WASHINGTON
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My name is Lucille Marion Erickson. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 52 Hap Way
Wallula Wa 99363

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Lucille Erickson

January 5, 2011

BEFORE THE WASHINGTON
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WASHINGTON STATE ATTORNEY GENERAL'S OFFICE AND THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Joint Complainants, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT CORP. Respondent.	Docket No. UE-_____ JOINT COMPLAINT OF ICNU AND PUBLIC COUNSEL

My name is Mary Gidley. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 164 Columbia Way
Walla Walla, WA 99363

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

January 5, 2011

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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My name is Virginia J. Mills. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 80 Hop Way P.O. Box 1104
Wellfield, Wash. 99363

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Virginia J. Mills

January 5, 2011

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE AND THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Joint Complainants, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT CORP. Respondent.	Docket No. UE-_____ JOINT COMPLAINT OF ICNU AND PUBLIC COUNSEL

My name is Lori Hoover. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 34 Gap Way
Wallula, WA 99363

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Lori Hoover

January 5, 2011

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE AND THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Joint Complainants, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT CORP. Respondent.	Docket No. UE-_____ JOINT COMPLAINT OF ICNU AND PUBLIC COUNSEL

My name is Walter Lovold. I am an electric consumer of PacifiCorp in the State of Washington.

My address is: 194 Columbia Way
Walla Walla Wa 99363

I have been informed that the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office are filing a Complaint with the Washington Utilities and Transportation Commission against PacifiCorp seeking rate refunds related to the sale of renewable energy credits by PacifiCorp. Pursuant to RCW 80.04.110, I hereby authorize ICNU to execute the Complaint on my behalf and generally represent my interests in any proceedings related to the Complaint.

Walter Lovold

January 5, 2011

Exhibit B

Affidavit of Melinda J. Davison

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE AND THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Joint Complainants, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT CORP. Respondents.	Docket No. UE-_____ AFFIDAVIT OF MELINDA J. DAVISON

STATE OF OREGON)
) ss.
County of MULTNOMAH)

I, Melinda J. Davison, being first duly sworn, do say:

1. My name is Melinda Davison. I am over the age of 18, a citizen of the United States, and competent to be a witness.

2. I am employed by the law firm of Davison Van Cleve as an attorney representing the Industrial Customers of Northwest Utilities (ICNU) before the Washington Utilities and Transportation Commission (the Commission). In this capacity, I participated in the 2009 General Rate Case of Pacific Power and Light, d/b/a PacifiCorp, Docket No. UE-090205 (*2009 GRC*).

3. In the *2009 GRC*, ICNU undertook discovery regarding PacifiCorp's 2008, 2009, and 2010 renewable energy credit (REC) sales. The purpose of this discovery was to establish the actual levels of test-year and rate-effective period sale price and volume. ICNU sought information regarding actual rate year revenue because it wished to assess whether the proposed pro forma adjustment to REC revenues sponsored by witness R. Bryce Dalley reflected the proper level of revenues.

4. ICNU sent two data requests, DRs 2.1 and 2.2, to PacifiCorp on February 24, 2009 relating to the Company's REC revenue adjustments. These data requests and the instructions are attached to the Joint Complaint as Exhibit B, and is a true and correct copy.

5. ICNU received responses from PacifiCorp to DRs 2.1 and 2.2. These responses showed REC prices for periods beyond the test year that differ from the test year price. ICNU relied on the information provided in response to DRs 2.1 and 2.2 as well as additional oral statements from PacifiCorp regarding future REC sales when it agreed to the REC revenue adjustment presented in the settlement agreement in the *2009 GRC*. A true and correct copy of the settlement agreement (omitting appendices) is attached to the Joint Complaint as Exhibit A.

6. In PacifiCorp's 2010 general rate case, Docket No. UE-100749 (*2010 GRC*), ICNU again undertook discovery regarding actual REC sales and revenues during the test-year and rate-effective period. In response, PacifiCorp provided actual contracts for REC sales for the test period, rate-effective period, and beyond.

This information has been designated by the Company as highly confidential. Upon information and belief that will be supplemented upon discovery, PacifiCorp's REC revenues during the rate-effective period were much higher than the pro forma adjustment presented by the Company or could be inferred from the information presented to parties through discovery requests, and PacifiCorp had reason to know of this discrepancy at the time of settlement of the 2009 GRC.

7. If ICNU had been provided complete and accurate information regarding 2009 and 2010 REC revenues by PacifiCorp during the discovery and settlement phases of the *2009 GRC*, ICNU would not have agreed to the REC terms in the Settlement. It is highly unlikely that ICNU would have settled any of its issues raised in the 2009 GRC without the Company agreeing to provide customers with a credit for the actual REC revenues received, on a Washington basis. Given the rate increases customers have seen related to the costs of new renewable resources, this was a very important issue to ICNU and its members.

Melinda J. Davison

SUBSCRIBED AND SWORN to before me this 6th day of January, 2011.

OFFICIAL SEAL
KELLIE L CHAUNCEY-LANCE
NOTARY PUBLIC-OREGON
COMMISSION NO. 447447
MY COMMISSION EXPIRES MARCH 14, 2014

Notary Public for Oregon
My Commission Expires: March 14, 2014

Exhibit C

Discovery Instructions Included with ICNU's First Set of Data Requests

to PacifiCorp on February 18, 2009 and

ICNU's Second Set of Data Requests to PacifiCorp on

February 24, 2009 in Docket No. UE-090205

Davison Van Cleve PC
Attorneys at Law
TEL (503) 241-7242 • FAX (503) 241-8160 • mail@dvclaw.com
Suite 400
333 SW Taylor
Portland, OR 97204

February 18, 2009

Via Electronic and U.S. Mail

Data Request Response Center
PacifiCorp
825 N.E. Multnomah, Ste. 800
Portland, OR 97232

Re: In the Matter of WUTC v. PacifiCorp
Docket No. UE-090205

To the Data Request Response Center:

Enclosed please find the Industrial Customers of Northwest Utilities' ("ICNU") First Set of Data Requests to PacifiCorp in the above-referenced matter. Consistent with past practice and due to the voluminous size of the filing, ICNU is sending these informal data requests prior to its formal intervention. Please respond to these informal data requests in ten business days, and provide your responses by no later than Wednesday, March 4, 2009, to this office, with a copy to Randall Falkenberg. Please contact our office as soon as possible if you need additional time to respond.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Brendan E. Levenick
Brendan E. Levenick

cc: Service List

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET NO. UE-090205
Complainant,	)	THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES' FIRST SET OF DATA REQUESTS TO PACIFICORP
v.	)	
PACIFICORP d/b/a PACIFIC POWER & LIGHT COMPANY,	)	
Respondent.	)	

Dated: February 18, 2009

I. DEFINITIONS

1. "Documents" refers to all writings and records of every type in your possession, control, or custody, whether or not claimed to be privileged or otherwise excludable from discovery, including but not limited to: testimony and exhibits, memoranda, papers, correspondence, letters, reports (including drafts, preliminary, intermediate, and final reports), surveys, analyses, studies (including economic and market studies), summaries, comparisons, tabulations, bills, invoices, statements of services rendered, charts, books, pamphlets, photographs, maps, bulletins, corporate or other minutes, notes, diaries, log sheets, ledgers, transcripts, microfilm, microfiche, computer data (including E-mail), computer files, computer tapes, computer inputs, computer outputs and printouts, vouchers, accounting statements, budgets, workpapers, engineering diagrams (including "one-line" diagrams), mechanical and electrical recordings, telephone and telegraphic communications, speeches, and all other records, written, electrical, mechanical, or otherwise, and drafts of any of the above.

   "Documents" includes copies of documents, where the originals are not in your possession, custody or control.

   "Documents" includes every copy of a document which contains handwritten or other notations or which otherwise does not duplicate the original or any other copy.

   "Documents" also includes any attachments or appendices to any document.

2. "Identification" and "identify" mean:

When used with respect to a document, stating the nature of the document (e.g., letter, memorandum, corporate minutes); the date, if any, appearing thereon; the date, if known, on which the document was prepared; the title of the document; the general subject matter of the document; the number of pages comprising the document; the identity of each person who wrote, dictated, or otherwise participated in the preparation of the document; the identity of each person who signed or initiated the document; the identity of each person to whom the document was addressed; the identity of each person who received the document or reviewed it; the location of the document; and the identity of each person having possession, custody, or control of the document.

When used with respect to a person, stating his or her full name; his or her most recently known home and business addresses and telephone numbers; his or her present title and position; and his or her present and prior connections or associations with any participant or party to this proceeding.

3. "PacifiCorp" refers to PacifiCorp, any affiliated company, or any officer, director or employee of PacifiCorp, or any affiliated company.

4. "Person" refers to, without limiting the generality of its meaning, every natural person, corporation, partnership, association (whether formally organized or ad hoc), joint venture, unit operation, cooperative, municipality, commission, governmental body or agency, or any other group or organization.

5. "Studies" or "study" includes, without limitation, reports, reviews, analyses and audits.

6. The terms "and" and "or" shall be construed either disjunctively or conjunctively whenever appropriate in order to bring within the scope of this discovery any information or documents which might otherwise be considered to be beyond their scope.

7. The singular form of a word shall be interpreted as plural, and the plural form of a word shall be interpreted as singular, whenever appropriate in order to bring within the scope of this discovery request any information or documents which might otherwise be considered to be beyond their scope.

II. INSTRUCTIONS

1. These requests call for all information, including information contained in documents, which relate to the subject matter of the Data Request and which is known or available to you.

2. Where a Data Request has a number of separate subdivisions or related parts or portions, a complete response is required to each such subdivision, part or portion. Any objection to a Data Request should clearly indicate the subdivision, part, or portion of the Data Request to which it is directed.

3. The time period encompassed by these Data Requests is from 1999 to the present unless otherwise specified.

4. Each response should be furnished on a separate page. In addition to hard copy, electronic versions of the document, including studies and analyses, must also be furnished if available.

5. If you cannot answer a Data Request in full, after exercising due diligence to secure the information necessary to do so, state the answer to the extent possible, state why you cannot answer the Data Request in full, and state what information or knowledge you have concerning the unanswered portions.

6. If, in answering any of these Data Requests, you feel that any Data Request or definition or instruction applicable thereto is ambiguous, set forth the language you feel is ambiguous and the interpretation you are using in responding to the Data Request.

7. If a document requested is unavailable, identify the document, describe in detail the reasons the document is unavailable, state where the document can be obtained, and specify the number of pages it contains.

8. If you assert that any document has been destroyed, state when and why it was destroyed and identify the person who directed the destruction. If the document was destroyed pursuant to your document destruction program, identify and produce a copy of the guideline, policy, or company manual describing such document destruction program.

9. If you refuse to respond to any Data Request by reason of a claim of privilege, confidentiality, or for any other reason, state in writing the type of privilege claimed and the facts and circumstances you rely upon to support the claim of privilege or the reason for refusing to respond. With respect to requests for documents to which you refuse to respond, identify each such document, and specify the number of pages it contains. Provide: (a) a brief description of the document; (b) date of document; (c) name of each author or preparer; (d) name of each person who received the document; and (e) the reason for withholding it and a statement of facts constituting the justification and basis for withholding it.

10. Identify the person from whom the information and documents supplied in response to each Data Request were obtained, the person who prepared each response, the person who reviewed each response, and the person who will bear ultimate responsibility for the truth of each response.

11. If no document is responsive to a Data Request which calls for a document, then so state.

12. These requests for documents and responses are continuing in character so as to require you to file supplemental answers as soon as possible if you obtain further or different information. Any supplemental answer should refer to the date and use the number of the original request or subpart thereof.

13. Whenever these Data Requests specifically request an answer rather than the identification of documents, the answer is required and the production of documents in lieu thereof will not substitute for an answer.

14. Please provide the responses to these Data Requests by Wednesday, March 4, 2009, to:

Irion A. Sanger
Davison Van Cleve, P.C.
333 S.W. Taylor
Suite 400
Portland, OR 97204
(503) 241-7242
ias@dvclaw.com

Randall Falkenberg
RFI Consulting
PMB 362
8343 Roswell Road
Sandy Springs, GA 30350
(770) 379-0505
consultrfi@aol.com

Davison Van Cleve PC
Attorneys at Law
TEL (503) 241-7242 • FAX (503) 241-8160 • mail@dvclaw.com
Suite 400
333 SW Taylor
Portland, OR 97204

February 24, 2009

Via Electronic and U.S. Mail

Data Request Response Center
PacifiCorp
825 N.E. Multnomah, Ste. 800
Portland, OR 97232

Re: In the Matter of WUTC v. PacifiCorp
Docket No. UE-090205

To the Data Request Response Center:

Enclosed please find the Industrial Customers of Northwest Utilities' ("ICNU") Second Set of Data Requests to PacifiCorp in the above-referenced matter. Consistent with past practice and due to the voluminous size of the filing, ICNU is sending these informal data requests prior to its formal intervention being granted. Please respond to these informal data requests in ten business days, and provide your responses by no later than Tuesday, March 10, 2009, to this office, with a copy to Donald Schoenbeck. Please contact our office as soon as possible if you need additional time to respond.

For the definitions and instructions that apply to these data requests, please refer to ICNU's First Set of Data Requests to PacifiCorp, dated February 18, 2009.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Brendan E. Levenick
Brendan E. Levenick

cc: Service List

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-090205 THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES' SECOND SET OF DATA REQUESTS TO PACIFICORP

Dated: February 24, 2009

Please provide the responses to these Data Requests by Tuesday, March 10, 2009, to:

Irion A. Sanger
Davison Van Cleve, P.C.
333 S.W. Taylor
Suite 400
Portland, OR 97204
(503) 241-7242
ias@dvclaw.com

Donald W. Schoenbeck
Regulatory & Cogeneration Services, Inc.
900 Washington Street, Suite 780
Vancouver, WA 98660
Telephone: 503-232-6155
Facsimile: 360-737-7628
dws@r-c-s-inc.com

III. DATA REQUESTS

2.1 With regard to Exhibit RBD-3, pages 3.7 and 3.7.1, please provide the actual green tag sales and revenue received by PacifiCorp since 2005. Please update this response as PacifiCorp executes additional sales throughout this proceeding.

2.2 With regard to Exhibit RBD-3, page 3.7, please provide all documents to support the pro forma sales price.

2.3 With regard to the prefiled testimony of Mr. Dalley, pages 34 and 35, please provide a copy of all workpapers used to derive and support the estimated revenue requirement associated with the proposed Chehalis deferral in Docket No. UE-082252.

2.4 With regard to the prefiled testimony of Mr. Dalley, pages 34 and 35, please provide a copy of all quarterly reports associated with the proposed Chehalis

deferral in Docket No. UE-082252. Please consider this an ongoing request, seeking a copy of all such reports throughout this proceeding.

Exhibit D

Affidavit of Sarah A. Shifley

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE AND THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Joint Complainants, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT CORP. Respondents.	Docket No. UE- AFFIDAVIT OF SARAH A. SHIFLEY

STATE OF WASHINGTON)
) ss.
County of KING)

I, Sarah A. Shifley, being first duly sworn, do say:

1. My name is Sarah A. Shifley. I am over the age of 18, a citizen of the United States, and competent to be a witness.

2. I am an Assistant Attorney General with the Public Counsel Section of the Washington Attorney General's Office (Public Counsel). In this capacity, I participated in 2009 General Rate Case of Pacific Power and Light, d/b/a PacifiCorp, Docket No. UE-090205 (*2009 GRC*), and am participating in the current PacifiCorp General Rate Case, Docket No. UE-100749 (*2010 GRC*).

6. Public Counsel sought in the *2009 GRC* settlement to have an accurate level of REC revenues reflected in the rate effective period. This was important to Public

Counsel because its position. and the position of this Commission. is that retail customers are entitled to these revenues. Public Counsel relied on the Company's assertions regarding its anticipated REC revenues.

7. Based on the information it was provided, Public Counsel had no basis for believing that PacifiCorp's actual REC 2009 and 2010 revenues would be as high as they actually were. If Public Counsel had been provided complete and accurate information on PacifiCorp's 2009 and 2010 REC revenues during the *2009 GRC*, it would not have agreed to the REC terms in the Settlement.

SARAH A. SHIFLEY, WSBA #39394

SUBSCRIBED AND SWORN to before me this 8th day of December, 2010.

LESLI R. ASHLEY
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
AUGUST 19, 2011

Notary Public for Washington
My Commission Expires: 8/19/2011

Exhibit E

Stipulation in Docket No. UE-090205

Omitting Appendices

BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PACIFICORP d/b/a PACIFIC POWER AND LIGHT COMPANY, Respondent.	**DOCKET UE-090205** **SETTLEMENT STIPULATION**

1 As described below, all parties to this docket, *i.e.*, PacifiCorp d/b/a Pacific Power & Light Company ("PacifiCorp" or "the Company"), Staff of the Washington Utilities and Transportation Commission ("Staff"), the Public Counsel Section of the Office of the Attorney General ("Public Counsel"), the Industrial Customers of Northwest Utilities ("ICNU") and The Energy Project[1] (individually, "Party"; collectively, "Parties") have reached an agreed resolution of issues in this docket, subject to Commission approval. Consequently, this Settlement Stipulation ("Stipulation") is being filed with the Commission as a "full settlement" pursuant to WAC 480-07-730(1). The Stipulation consists of this document, entitled "Settlement Stipulation," Appendix A, Appendix B, Appendix C, and Appendix D attached hereto.

[1] Comprised of The Energy Project, Opportunity Council, Northwest Community Action Center, and Industrialization Center of Washington.

2 The Parties understand that this Stipulation is not binding on the Commission or any Party unless and until the Commission approves it.[2]

I. PARTIES

3 This Stipulation is entered into by the Company, Staff, Public Counsel, ICNU, and The Energy Project regarding PacifiCorp's pending general rate filing in the above docket. These are all the parties to this docket.

II. RECITALS

4 On February 9, 2009, PacifiCorp filed with the Washington Utilities and Transportation Commission ("Commission") revisions to its currently effective Tariff WN U-74, designed to effect a general rate increase for electric service. The filing was based on an historical twelve-month period ending June 30, 2008, adjusted for known and measurable changes. In the filing, the Company requested a revenue increase of $38.5 million, or 15.1 percent.

5 The Company's filing included an increase to the Washington-allocated net electric plant in service of more than $125 million since the Company's last general rate case ("2008 Rate Case"). These capital additions are primarily related to the addition of the Chehalis natural gas plant and the Marengo II wind resource located in Washington. The new capital costs in this case also reflect a full year of the Goodnoe Hills wind resource and the Marengo wind resource, both of which are located in Washington and were found to be prudent resources in the 2008 Rate Case. In connection with the new resources, the Company's filing also included additional depreciation and O&M expenses. Washington-allocated O&M expenses, excluding net power costs, were approximately $2.8 million higher than the 2008 Rate Case. Washington-allocated depreciation and amortization expenses were approximately $2.9 million higher than the 2008

[2] The exception is that prior to the Commission's approval of the Stipulation, the Parties agree to support the Stipulation before the Commission. ¶ 31, *infra*.

Rate Case and net power costs were projected to increase approximately $10 million on a Washington-allocated basis as compared to amounts included in the 2008 Rate Case.[3] The filing was suspended by a Commission order dated February 26, 2009.[4]

6 In addition, the Company's filing requested Commission authorization to begin amortization of costs associated with PacifiCorp's new ownership interest in the Chehalis generating plant pursuant to RCW 80.80.060(6).[5] *See also* WAC 480-100-435(1). The Company requested an amortization of approximately $2 million per year, to be recovered in rates through a continuation of the Hydro Deferral Amortization (which the Commission authorized in Docket UE-080220) until the Hydro Deferral amounts and the Chehalis deferral amounts were completely amortized.[6]

7 By an order dated March 2, 2009, presiding Administrative Law Judge Patricia Clark granted the petition to intervene of ICNU.[7] At the Prehearing Conference on March 23, 2009, The Energy Project was also granted intervention in this proceeding.

8 Subsequent to the Prehearing Conference, Staff, Public Counsel, ICNU, and The Energy Project conducted extensive discovery on the Company's direct testimony.

9 The Parties participated in a settlement conference on August 3, 2009. At the settlement conference and over subsequent days, the Parties presented proposals and counter-proposals that resulted in agreement among all Parties on a resolution of this proceeding.

---

[3] See Dalley, Exh. ___ (RBD-1T) at 7-8.
[4] *Wash. Utilities and Transp. Comm'n v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-090205, Order 01 (Feb. 26, 2009).
[5] *See Pacific Power Notice of Deferred Accounting for Chehalis Generating Plant*, Docket UE-082252, Notice of Deferred Accounting (Dec. 18, 2008).
[6] Dalley, Exh. ___ (RBD-1T) at 35, ll. 4-18.
[7] *Wash. Utilities and Transp. Comm'n v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-090205, Order 02 (March 2, 2009).

10 The Parties have reached an agreed resolution of this proceeding and wish to present their agreement for the Commission's consideration. The Parties therefore adopt the following Stipulation, which is entered into by the Parties voluntarily to resolve matters in dispute among them in the interest of expediting the orderly disposition of this proceeding.

III. AGREEMENT

A. Rate Increase and Rate Effective Date

11 The Parties agree that PacifiCorp shall be authorized to implement rate changes designed to increase its annual revenues from Washington customers by $13.5 million (or 5.3 percent). The Parties agree that the agreed rate changes identified herein will be effective with service on and after January 1, 2010. The suspension period in this case ends on January 11, 2010.

B. Recovery of the Chehalis Regulatory Asset

12 The Parties agree that the Commission should make the following conclusion of law and/or finding related to the Greenhouse Gas Emissions Performance Standard:

> The Company's acquisition of the Chehalis generating plant complies with the Greenhouse Gases Emissions Standard in RCW 80.80.040(1) and therefore, the Company was allowed to defer certain costs related to that plant, per RCW 80.80.060(6).

13 As part of the increase to base rates, the Parties agree that the Commission should authorize the Company to establish a Washington-jurisdictional regulatory asset of $18.0 million for Washington-allocated costs associated with PacifiCorp's acquisition of the Chehalis generating plant. The costs deferred are: operating and maintenance costs, depreciation, taxes, and cost of invested capital. The Company will begin amortization of

the regulatory asset on January 1, 2010; coincident with the proposed rate increase effective date. The Company will amortize the Chehalis deferral at $3.0 million per year over a six-year period. The 2010 amount ($3.0 million) is reflected in the annual revenue increase agreed to in Section III.A above. The Company agrees not to seek recovery for any costs deferred in excess of the $18.0 million associated with Docket UE-082252 in which PacifiCorp deferred costs related to its ownership of the Chehalis generating plant under RCW 80.80.060(6). The deferral period is between September 15, 2008, and the effective date of the final decision by the Commission in this proceeding.

C. Rate Spread

14 The Parties agree that the increase will be spread to all rate schedules on an equal percentage of revenue basis. Appendix A to this Stipulation shows the results of the agreed rate spread by rate schedule.

D. Rate Design

15 The Parties agree that the Commission should accept the Company's rate design proposals as set forth in the Company's direct testimony in this proceeding[8] with one exception: the residential basic charge will remain at $6.00 per month.[9] Appendix B contains the proposed tariff schedules and workpapers reflecting the proposed rates designed to collect the $13.5 million rate increase.

E. Authorized Return on Rate Base

16 The Parties agree that the Company's authorized overall rate of return will remain at 8.060 percent. The parties have explicitly not agreed on the appropriate capital ratios or the cost of any capital structure component. However, the Parties agree that, if needed for

[8] Griffith, Exh. ___ (WRG-1T) at 4, l. 3-7, l. 22.
[9] Schedule 16 Residential Service.

reporting and/or accounting purposes, the Company may use the authorized return on equity from the Company's last fully litigated rate case before the Washington Utilities and Transportation Commission.[10]

F. Low Income Bill Assistance

17 The Parties agree that the Low Income Bill Assistance ("LIBA") Program credit, available through Schedule 17, and funded by other customers through Schedule 91, will be increased by a percentage amount equal to the overall percentage change in residential rates. One-hundred percent of the increase will be applied to increase the Schedule 17 energy credit to partially offset the impact of the rate increase on those customers who are able to participate in the Schedule 17 rates. The Schedule 91 surcharge will be increased to recover the increase to the Schedule 17 credit. Changes to Schedule 17 and Schedule 91 are presented in Appendix B.

G. Pension Curtailment

18 The Parties agree to support the following resolution of PacifiCorp's Petition for an Accounting Order Regarding Pension Curtailment, Docket UE-081997, currently before the Commission: the Commission should authorize the Company to defer and amortize the Washington-allocated portion of the pension curtailment gain over a three-year period beginning January 1, 2010. Specifically, the Commission should authorize $2,901,000 to be recorded as a reduction to the existing pension regulatory asset. The $2,901,000 should be amortized over three years. The 2010 amount of this gain is reflected in the annual revenue increase agreed to in Section III.A above. Upon Commission approval of the regulatory

[10] In *Wash. Utilities and Transp. Comm'n v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-061546, Order 08 (June 21, 2007), the Commission determined PacifiCorp's cost of equity to be 10.2 percent.

treatment for pension curtailment described in this section, PacifiCorp will seek to withdraw the petition filed in Docket UE-081997.[11]

H. Temperature Normalization Methodology

19 The Parties accept the temperature normalization methodology as proposed by the Company in this filing. The Parties, however, reserve the right to propose changes to that methodology or propose a new methodology in future rate cases if they believe the underlying data is insufficient, or if a Party believes new information comes to light. In addition, the Parties agree to convene discussions prior to the Company's filing of its next general rate case in an effort to reach resolution of outstanding concerns regarding data sufficiency, or other issues that may exist at that time. All parties to this docket will be invited to participate in such discussions.

I. Reporting Related to Renewable Energy Credits

20 The Company agrees to provide a report prior to January 1, 2010 that includes: (1) an explanation of how Renewable Energy Credits ("RECs") and associated costs and/or revenues are allocated among PacifiCorp's six states; (2) an explanation of how the Company determines proper disposition of RECs on a total-company and state-by-state basis; and, (3) a detailed accounting of the total-company RECs that were sold and the total-company RECs that were retained for each year from calendar year 2005 through June 2009.

21 Beginning with the quarter ending March 31, 2010, and subject to the terms of the protective order in this proceeding, the Company agrees to provide to Staff, Public Counsel, and ICNU a quarterly report related to the Company's management of RECs from June 2009 forward. The quantitative aspects of the report are intended to be presented

[11] If the Commission approves PacifiCorp's request to withdraw its petition, a result of the withdrawal will be to withdraw PacifiCorp's request for the Commission to authorize deferred accounting treatment related to the impact of the measurement date change.

substantially in the form shown in Appendix C, but may be revised and updated based on further discussions among the Parties. The spreadsheet provides on a total-company, west control area and Washington-allocated basis: the total monthly generation of RECs by resource, the estimated and actual level of REC transactions on a megawatt-hour basis, and the actual level of REC-related revenues. The Company also agrees to hold periodic meetings as requested by any Party to provide additional details on the report.

22 The Parties agree to reach a mutually agreeable approach for treatment of information that the Company considers to be commercially sensitive and highly confidential, subject to WAC 480-07-160. The Parties agree that the quarterly reporting will continue at least through December 31, 2012. Prior to January 1, 2013, the Parties agree to meet and agree on appropriate changes, if any, to the content or frequency of reports once the Renewable Portfolio Standard is in effect with associated reporting under WAC 480-109-040. Nothing in this Stipulation limits or expands the ability of any Party to file for deferred accounting or request that the Commission take any other action regarding PacifiCorp's Washington-allocated RECs. For purposes of any such filing, the Parties agree that this case includes $657,755 in Washington-allocated REC revenues for the 2010 rate effective period.

J. Discovery and Procedural Schedule

23 The Parties agree to suspend all discovery in this proceeding pending filing and consideration of this Stipulation. In the event the case resumes, the Parties agree to work cooperatively to develop a new schedule taking into consideration the delay associated with this settlement.

K. Net Power Costs Workpapers and Supporting Documentation

24 PacifiCorp and ICNU agree to the terms outlined in Appendix D regarding the net power cost workpapers and supporting documents provided in the Company's general rate cases or any other future power cost related case. If the documents identified in Appendix D include confidential material, the confidential material will be provided pursuant to a confidentiality agreement with the Company or pursuant to a protective order applicable to the relevant proceeding or general rate case. The Company will coordinate with ICNU and/or make any necessary requests to the Commission for a protective order in advance of the filing so that the Company provides confidential material under Section A(1) of Appendix D concurrent with the Company's filing. This paragraph does not affect the Parties' obligations to comply with the filing requirements in WAC 480-07-510, or any applicable Commission order.

L. Next General Rate Case

25 The Company will not file a general rate case before January 11, 2010.

M. Request for Prudence Findings

26 The Parties agree that the Commission should make the following prudence findings as part of an order accepting this Stipulation:

27 The Company was prudent in acquiring the Marengo II wind project and the Chehalis generating plant, and these facilities are used and useful for service to Washington customers.

28 The Parties agree that these findings do not limit a Party's right to argue in a future proceeding that the Marengo II wind project or the Chehalis generating plant are no longer used and useful for service to Washington customers based on a change in circumstances.

N. General Provisions

29 **1.** The Parties agree that this Stipulation is in the public interest and would produce rates for the Company that are fair, just, reasonable, and sufficient. The Parties agree to support this Stipulation as a settlement of all contested issues in this proceeding. The Parties further agree that this Stipulation, upon its approval by the Commission, resolves and concludes this proceeding. The Parties understand that this Stipulation is not binding on the Commission or any Party unless and until it is approved.

30 **2.** The Parties agree that this Stipulation represents a compromise in the positions of the Parties. As such, conduct, statements, and documents disclosed in the negotiation of this Stipulation shall not be admissible as evidence in this or any other proceeding.

31 **3.** The Parties agree this Stipulation represents the entire agreement of the Parties, and it supersedes any and all prior oral or written understandings or agreements related to this docket or this settlement, if any, and no such prior understanding, agreement or representation shall be relied upon by any Party. Parties have negotiated this Stipulation as an integrated document. Accordingly, the Parties recommend that the Commission adopt this Stipulation in its entirety.

32 **4.** The Parties shall cooperate in submitting this Stipulation promptly to the Commission for acceptance, and cooperate in supporting this Stipulation throughout the Commission's consideration of this Stipulation. In particular, each Party shall cooperate in developing a narrative and presenting supporting witnesses, and/or presenting supporting testimony, as described in WAC 480-07-740(2)(a) and (b). The Parties agree to support the Stipulation throughout the Commission's consideration of this Stipulation, and abide by the procedures determined by the Commission for its review of this Stipulation. If necessary,

each Party will provide witnesses to sponsor and support this Stipulation at a Commission hearing. If the Commission decides to hold such a hearing, each Party will recommend that the Commission issue an order adopting the Stipulation. In the event the Commission rejects this Stipulation, the provisions of WAC 480-07-750(2)(a) shall apply. In the event the Commission accepts the Stipulation upon conditions not proposed herein, the provisions of WAC 480-07-750(2)(b) shall apply. In the event the Commission accepts the Stipulation upon conditions not proposed herein, or approves resolution of this proceeding through provisions that are different than recommended in this Stipulation, each Party reserves the right, upon written notice to the Commission and all parties to this proceeding within seven (7) days of the Commission's order, to state its rejection of the conditions. If any Party rejects a proposed new condition, the Parties will: (1) request the prompt reconvening of a prehearing conference for purposes of establishing a procedural schedule for the completion of the case pursuant to WAC 480-07-750(2)(a); and, (2) cooperate in development of a schedule that concludes the proceeding on the earliest possible date, taking into account the needs of the Parties in participating in hearings and preparing briefs.

33 **5.** In the event the Commission determines that it will reject the Stipulation or accept the Stipulation upon conditions not proposed herein, the Parties request that the Commission issue an order as soon as possible so that the Parties may promptly invoke the provisions of WAC 480-07-750.

34 **6.** The Parties enter into this Stipulation to avoid further expense, inconvenience, uncertainty, and delay. By executing this Stipulation, no Party shall be deemed to have approved, admitted, or consented to the facts, principles, methods, or theories employed in arriving at the terms of this Stipulation, nor shall any Party be deemed

to have agreed that any provision of this Stipulation is appropriate for resolving issues in any other proceeding, except to the extent expressly set forth in the Stipulation, including but not limited to prudence of new resources, the cap on costs deferred for the Chehalis resource under RCW 80.80.060(6), the GRID and workpaper filing requirements, and the earliest filing date for the next general rate case.

35 **7.** This Stipulation may be executed in counterparts and each signed counterpart shall constitute an original document. A Party may authorize another Party to sign on the first Party's behalf. A signed signature page that is faxed or emailed is acceptable as an original signature page signed by that Party.

36 **8.** This Stipulation is the product of negotiation and no part shall be construed against any Party on the basis that it was the drafter.

37 **9.** Each Party agrees to provide all other Parties the right to review in advance of publication any and all announcements or news releases that any other Party intends to make about the Stipulation (with the right of review to include a reasonable opportunity to request changes to the text of such announcements). Each Party also agrees to include in any news release or announcement a statement to the effect that the Commission Staff's recommendation to approve the Stipulation is not binding on the Commission itself.

38 **10.** The effective date of this Stipulation is the date of the Commission order approving it, subject to the procedures of Part III.N.4 (¶ 31) above.[12]

39 This STIPULATION is entered into by each Party as of the date entered below.

DATED: August 25, 2009.

[12] The effective date of the provisions wherein the Parties agree to support the Stipulation is the date of the latest dated signature to the Stipulation.

PacifiCorp

By _____
Andrea L. Kelly
Vice President, Regulation

Date: _____

Staff of the Washington Utilities and Transportation Commission

By _____
Donald T. Trotter
Senior Counsel
Jennifer Cameron-Rulkowski
Assistant Attorney General

Date: 8/25/09

Public Counsel Section of the Office of the Attorney General

By _____
Sarah A. Shifley
Assistant Attorney General

Date: _____

Industrial Customers of Northwest Utilities

By _____
Melinda J. Davison
Attorney for ICNU

Date: _____

The Energy Project

By Brad Purdy by Donald T. Trotter per telephone authorization on 8/24/09
Brad Purdy
Attorney for The Energy Project

Date: 8/25/09

PacifiCorp

By Andrea L. Kelly
Andrea L. Kelly
Vice President, Regulation

Date: 8/25/09

Staff of the Washington Utilities and Transportation Commission

By _____
Donald T. Trotter
Senior Counsel
Jennifer Cameron-Rulkowski
Assistant Attorney General

Date: _____

Public Counsel Section of the Office of the Attorney General

By _____
Sarah A. Shifley
Assistant Attorney General

Date: _____

Industrial Customers of Northwest Utilities

By _____
Melinda J. Davison
Attorney for ICNU

Date: _____

The Energy Project

By _____
Brad Purdy
Attorney for The Energy Project

Date: _____

PacifiCorp

By _____
Andrea L. Kelly
Vice President, Regulation

Date: _____

Staff of the Washington Utilities and Transportation Commission

By _____
Donald T. Trotter
Senior Counsel
Jennifer Cameron-Rulkowski
Assistant Attorney General

Date: _____

Public Counsel Section of the Office of the Attorney General

By _____ FOR
Sarah A. Shifley
Assistant Attorney General

Date: 8/25/09

Industrial Customers of Northwest Utilities

By _____
Melinda J. Davison
Attorney for ICNU

Date: _____

The Energy Project

By _____
Brad Purdy
Attorney for The Energy Project

Date: _____

PacifiCorp

By _____
Andrea L. Kelly
Vice President, Regulation

Date: _____

Staff of the Washington Utilities and Transportation Commission

By _____
Donald T. Trotter
Senior Counsel
Jennifer Cameron-Rulkowski
Assistant Attorney General

Date: _____

Public Counsel Section of the Office of the Attorney General

By _____
Sarah A. Shifley
Assistant Attorney General

Date: _____

Industrial Customers of Northwest Utilities

By _____
Melinda J. Davison
Attorney for ICNU

Date: August 25, 2009

The Energy Project

By _____
Brad Purdy
Attorney for The Energy Project

Date: _____

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PUBLIC COUNSEL AND THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Joint Complainants, vs. PACIFICORP d.b.a. PACIFIC POWER & LIGHT CORP., Respondent.	DOCKET UE-110070 PACIFICORP'S ANSWER AND AFFIRMATIVE DEFENSES TO JOINT COMPLAINT

I. SUMMARY STATEMENT

1 Pursuant to WAC 480-07-370(1)(c) PacifiCorp (PacifiCorp or the Company) hereby files its Answer to the Joint Complaint filed by the Public Counsel Section of the Washington Attorney General's Office (Public Counsel) and the Industrial Customers of Northwest Utilities (ICNU) (collectively, Complainants). Concurrent with this filing, PacifiCorp is also filing a Motion to Dismiss the Joint Complaint pursuant to WAC 480-07-380(1).

2 This case involves an allegation by Complainants that PacifiCorp violated certain statutes and Washington Utilities and Transportation Commission (Commission) rules and, as a result, Complainants entered into a settlement in the Company's 2009 rate case, Docket UE-090205 (2009 GRC), that they would not have entered into but for the alleged violations. At its heart, ICNU and Public Counsel allege that PacifiCorp (1) disclosed through discovery information that called into question the validity of the pro forma renewable energy credit (REC) sales price

/ / /

included in its filed case and (2) failed to include in its response to data requests certain REC sales contracts that Complainants allege should have been disclosed.

3 As this Answer demonstrates, the first allegation on its face is without merit. Complainants cannot claim that the Company violated Washington law because the Company calculated a pro forma adjustment in a manner that they dispute. This is especially true when, by their own admission, both ICNU and Public Counsel had the information they now claim undercuts the Company's adjustment when they entered into the rate case settlement.

4 Complainants' second basic allegation is also wrong on the facts because by the clear and unambiguous text of the data requests served on the Company, the Company provided full and complete responses. Complainants' claims rest on their erroneous allegation that because the Company did not provide information that they did not request, it somehow concealed the information. This is simply untrue as a matter of law.

5 And finally, as described more fully in the Motion to Dismiss, the Joint Complaint's claims under the reparations statute are time-barred, and its claims under the overcharges statute are deficient, as are its claims seeking amendment of the 2009 GRC Final Order.

II. ANSWER

6 Respondent PacifiCorp answers the Joint Complaint as follows:

7 Paragraph 1 of the Joint Complaint describes the parties to this action. PacifiCorp admits that it is a "public service company" and an "electrical company" as those terms are defined in RCW 80.04.010. PacifiCorp admits that it is subject to the jurisdiction of the Commission. PacifiCorp admits that both Complainants were intervenors in the Company's 2009 GRC and in Docket UE-

///

100749, the Company's 2010 rate case (2010 GRC). The remainder of Paragraph 1 describes Public Counsel and ICNU and requires no response.

8 Paragraph 2 identifies the statutes and rules that may be at issue in this proceeding and requires no response.

9 Paragraph 3 alleges the legal basis upon which the Complainants have filed this Complaint and the relief requested. To the extent that this paragraph includes legal conclusions no response is required; however, should an answer be required, PacifiCorp denies the same.

10 The Company denies the allegations in Paragraph 4.

11 Paragraph 5 states that the Joint Complaint is supported by information and belief and that specific data will be provided through discovery. This allegation does not require a response, but to the extent that it does, the Company denies it.

12 Paragraph 6 describes the legal basis for Commission jurisdiction over the Joint Complaint. Because this paragraph represents legal conclusions it does not require a response.

13 Answering Paragraph 7, PacifiCorp admits that it filed its 2009 GRC on February 9, 2009 and that the rate effective period was 2010. PacifiCorp denies that the test period was calendar year 2008—it was the twelve months ended June 30, 2008. The Company admits the remaining allegations in Paragraph 7 describing the pro forma REC-revenue adjustment included in its filed case.

14 PacifiCorp admits the allegations in Paragraph 8.

15 Answering Paragraph 9, PacifiCorp admits that it sent an initial response to ICNU Data Request 2.1 (ICNU 2.1) on March 10, 2009. The response speaks for itself and PacifiCorp disputes the Joint Complaint's characterization of the response. PacifiCorp also denies the allegation that

PacifiCorp understood ICNU 2.1 as a request for information regarding all *executed sales contracts*.

16 Answering Paragraph 10, the Company's response to ICNU 2.1 speaks for itself and the Company denies the characterization of the response.

17 Answering Paragraph 11, PacifiCorp admits that it provided an update to its response to ICNU 2.1 on July 2, 2009. The Company's response to ICNU 2.1 speaks for itself and the Company denies the characterization of the response. PacifiCorp also denies the allegation that PacifiCorp understood ICNU 2.1 as a request for information regarding all *executed sales contracts*.

18 PacifiCorp denies the allegations in Paragraph 12.

19 PacifiCorp admits the allegations in Paragraph 13.

20 Answering Paragraph 14, PacifiCorp admits that it received ICNU 2.2 and that Paragraph 14 correctly quotes its language. The Company admits that it sent an initial response on March 10, 2009, and a revised response on March 19, 2009. The Company's responses to ICNU 2.2 speak for themselves and the Company denies the characterization of the responses.

21 Answering Paragraph 15, the Company admits the parties began settlement discussions on August 3, 2009, reached a settlement in principle on August 5, 2009, filed an all-party stipulation on August 25, 2009, and that the stipulation included $657,755 in Washington-allocated REC revenue for the 2010 rate effective period. The Company has insufficient knowledge to either admit or deny the allegations in the second sentence of Paragraph 15 because it does not know what informed other parties' settlement discussions. The Company acknowledges that neither ICNU nor Public Counsel requested any additional information regarding 2009 or 2010 REC sales prices or revenues.

22 The Company admits the allegations in Paragraph 16 and 17.

23 Answering Paragraph 18, PacifiCorp admits that ICNU and Public Counsel obtained the actual California Contracts and admits that the information is highly confidential. PacifiCorp also admits that those contracts were not produced during the 2009 GRC because they remained contingent until *after* the discovery process was suspended and the stipulation filed. PacifiCorp denies the remainder of the allegations in Paragraph 18.

A. First Cause of Action—Violation of RCW 34.05.452 and 80.04.130 and WAC 480-07-540—PacifiCorp's Proposed Pro Forma Revenue Adjustment was Inconsistent with Known and Measurable Rate Effective Period Revenues.

24 The allegations in Paragraphs 19 and the first Paragraph 20 are legal conclusions that require no response.[1]

25 Answering the allegations in the *second* Paragraph 20, PacifiCorp admits that the pro forma sales price included in Exhibit No. RBD-3 in the 2009 GRC was $3.50 per REC. PacifiCorp denies the remainder of the allegations in the second Paragraph 20.

B. Second Cause of Action—Violation of WAC 480-07-405(7) and RCW 80.28.010—Failure to Present Accurate and Complete Evidence Resulted in Settlement Approving Unjust, Unreasonable, and Unfair Rates.

26 The first and third sentences of Paragraph 21 are legal conclusions and require no response. PacifiCorp denies that it failed to provide accurate and complete responses to ICNU 2.1 and 2.2. PacifiCorp denies that the settlement in the 2009 GRC allowed the Company to charge and collect unjust, unreasonable, and unfair rates.

27 Answering Paragraph 22, the Company admits that the paragraph correctly describes the terms of ICNU 2.2. PacifiCorp denies the remainder of the allegations in Paragraph 22.

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[1] The Joint Complaint has an unnumbered paragraph between Paragraphs 20 and 21. For purposes of this answer the Company refers to the unnumbered paragraph as "the second Paragraph 20."

28 Answering Paragraph 23, the Company denies that Complainants correctly state the terms of ICNU 2.1. With respect to the fourth and fifth sentences of Paragraph 23, the Company lacks the knowledge to respond. PacifiCorp denies the remainder of the allegations in Paragraph 23.

C. Third Cause of Action—Violation of WAC 480-07-405(8)—Failure to Supplement Data Responses.

29 Answering Paragraph 24, the first two sentences are legal conclusions that require no response. PacifiCorp denies the third sentence to the extent that it fails to properly characterize the terms of ICNU 2.1 and 2.2. PacifiCorp denies the remainder of the allegations in Paragraph 24.

III. AFFIRMATIVE DEFENSES

30 Complainants' Joint Complaint is barred by the statute of limitations, as set forth in PacifiCorp's Motion to Dismiss, which was filed concurrently with this Answer.

31 Complainants' Joint Complaint fails to state a claim upon which relief can be granted, as set forth in PacifiCorp's Motion to Dismiss, which was filed concurrently with this Answer.

32 Complainants' Joint Complaint constitutes an improper collateral attack on the Commission's Final Order in the 2009 GRC, as set forth in PacifiCorp's Motion to Dismiss, which was filed concurrently with this Answer.

33 Complainants' Joint Complaint constitutes a request for illegal retroactive ratemaking, as set as set forth in PacifiCorp's Motion to Dismiss, which was filed concurrently with this Answer.

34 Complainants' Joint Complaint constitutes an improper single-issue ratemaking, as set forth in PacifiCorp's Motion to Dismiss, which was filed concurrently with this Answer.

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IV. PRAYER FOR RELIEF

WHEREFORE, PacifiCorp asks the Commission to dismiss the Joint Complaint with prejudice.

DATED: February 7, 2011.

Respectfully Submitted,

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PUBLIC COUNSEL AND THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Joint Complainants, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT CORP. Respondent.	Docket No. UE-110070 PACIFICORP'S MOTION TO DISMISS JOINT COMPLAINT

I. INTRODUCTION

1 Pursuant to WAC 480-07-380(1), Pacific Power & Light d/b/a PacifiCorp (PacifiCorp or the Company) moves the Washington Utilities and Transportation Commission (WUTC or the Commission) for an order dismissing with prejudice the Joint Complaint filed by the Public Counsel Section of the Washington Attorney General's Office (Public Counsel) and the Industrial Customers of Northwest Utilities (ICNU) (collectively, Complainants).

2 The Joint Complaint alleges that PacifiCorp violated certain statutes and Commission rules in connection with forecasting revenues from renewable energy credits (RECs) in PacifiCorp's 2009 general rate case, Docket UE-090205 (2009 GRC). Among these "violations" are complaints about PacifiCorp's calculation of its pro forma adjustment for REC revenues in the case, allegations that PacifiCorp failed to file testimony under oath and meet its burden of proof, and claims that PacifiCorp's discovery responses were deficient. These claims, which are

unsupported even on the face of the Joint Complaint, do not form the basis for independent causes of action against PacifiCorp.

3 ICNU and Public Counsel allege that, but for these violations, they would not have agreed to join in the Settlement Stipulation that resolved the 2009 GRC (Settlement). Under the Settlement, the parties agreed to a rate change to increase PacifiCorp's annual revenues from Washington customers by $13.5 million (or 5.3 percent) effective January 1, 2010. The Commission approved the Settlement without modification in Order 09, Docket UE-090205 (December 16, 2009) (2009 GRC Final Order).

4 Under the reparations and overcharge statutes, RCW 80.04.220 and 80.04.230, respectively, ICNU and Public Counsel seek a refund for REC revenues "covered" by the 2009 GRC Final Order and an ongoing balancing account. Alternatively, under RCW 80.04.210, which authorizes the Commission to "alter or amend any order or rule made, issued or promulgated by it" they seek to amend the 2009 GRC Final Order to reflect the actual level of 2010 REC revenues that PacifiCorp "knew or should have known" it would receive during 2010.

5 ICNU and Public Counsel have it wrong on all elements of their Joint Complaint. Most fundamentally, ICNU and Public Counsel rely on *AT&T Communications et al. v. Qwest Corporation*, Docket UT-051682, Initial Order (Feb. 10, 2006) (hereinafter, *AT&T I*) to establish that their central claims for reparations are timely under the six-month statute of limitations. ICNU and Public Counsel omit the fact that the Commission reversed *AT&T I* and, in so doing, established precedent demonstrating that the reparations claims in the Joint Complaint are time-barred. Similarly, while ICNU and Public Counsel invoke the overcharge statute, they make no

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allegation that PacifiCorp has charged rates in excess of those authorized in the 2009 GRC Final Order.

6 ICNU's and Public Counsel's alternative request for an order amending the 2009 GRC Final Order fails on at least three grounds: as an improper collateral attack on that order, an illegal request for retroactive ratemaking, and a proposal for single-issue ratemaking that contravenes Commission policy.

7 ICNU, Public Counsel, and other parties negotiated specific provisions in the Settlement to address uncertainties around the REC revenue level in the 2009 GRC. ICNU and Public Counsel first failed to avail themselves of these provisions and ignored the issue of REC revenues for months. They then filed this Joint Complaint under inapplicable Commission statutes and wrongly blamed PacifiCorp for their own lack of diligence. Even a threshold review of the Joint Complaint reveals its fundamental deficiencies. PacifiCorp respectfully requests that the Commission dismiss the Joint Complaint with prejudice.

II. BACKGROUND

8 PacifiCorp filed its 2009 GRC on February 9, 2009. The filing was based on an historic test period consisting of the twelve months ended June 30, 2008; the rate effective period was the twelve months ending December, 2010.[1] 2009 GRC, Exhibit No. RBD-1T 8:13-14. Mr. R. Bryce Dalley, the Company's Manager of Revenue Requirement, described the Company's restated and pro forma adjustments for REC revenues in his testimony. *See* 2009 GRC Exhibit No. RBD-1T 14; 2009 GRC Exhibit No. RBD-3 3.7. These adjustments resulted in forecast

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[1] The Joint Complaint incorrectly states that the test period for the 2009 GRC was "the 2008 calendar year." Joint Complaint at ¶ 7.

Washington-allocated REC revenues of $657,755, which reflects a REC sales price of $3.50 MWh. *See* 2009 GRC Exhibit No. RBD-3 3.7.

9 On February 24, 2009, ICNU sent PacifiCorp its second set of data requests, including ICNU Data Requests 2.1 and 2.2, which both related to REC revenues. ICNU Data Request 2.1 (ICNU 2.1) provided as follows: "With regard to Exhibit RBD-3, pages 3.7 and 3.7.1, please provide the actual green tag sales and revenues received by PacifiCorp since 2005. Please update this response as PacifiCorp executes additional sales throughout this proceeding." This request did not ask for executed sales contracts nor did it ask for the most current REC sales price. ICNU Data Request 2.2 (ICNU 2.2) provided: "With regard to Exhibit RBD-3, page 3.7, please provide all documents to support the pro forma sales price." This request sought only documents supporting the pro forma REC sales price included in Exhibit No. RBD-3, which was filed on February 9, 2009.

10 PacifiCorp responded to ICNU 2.1 and 2.2 on March 10, 2009. For ICNU 2.1, PacifiCorp provided ICNU with a spreadsheet listing and describing every contract pursuant to which PacifiCorp was either buying or selling RECs since January 1, 2005, as requested by ICNU 2.1. The spreadsheet was a working document utilized by the Company to track its REC transactions and included a forecast of PacifiCorp's projected REC sales through December 2009, for all non-contingent contracts. For purposes of this document, PacifiCorp treats contracts requiring a regulatory approval as contingent until it has received all necessary regulatory approvals.[2]

11 On March 19, 2009, the Company provided a "1st Revised Response to ICNU Data Request 2.2." In that response, the Company provided ICNU with the data on which the Company relied to

[2] *See* Affidavit of Gregory N. Duvall. This affidavit is attached to provide additional background and context on the issues raised in the Joint Complaint. But the facts necessary for resolution of this motion are either admitted in the

formulate the pro forma REC revenue price presented in its direct case for a rate increase. This data included the REC market broker quotes for the time period of March 2006 through September 2007.

12 Neither ICNU nor Public Counsel sought clarification of the Company's responses to ICNU 2.1 or 2.2, asked for an explanation of the time period analyzed, alleged at that time that the Company's responses were inaccurate or incomplete, or sought follow-up data requests on REC revenues.

13 After PacifiCorp responded to ICNU 2.1 and 2.2, it entered into two new REC sales contracts with San Diego Gas & Electric (SDG&E) and Southern California Edison (SCE) (California Contracts). These contracts were executed in May 2009, subject to approval by the California Public Utilities Commission (CPUC). Prior to becoming effective, the California Contracts required the purchasing utilities (SDG&E and SCE) to obtain CPUC approval. The SDG&E and SCE contracts were filed for approval with the CPUC on July 1, 2009, and June 5, 2009, respectively. These filings were publicly posted on the SCE and SDG&E websites.[3]

14 The Company did not presume that approval of the California Contracts would be granted as a matter of course or in a particular time frame. In some instances, the CPUC has delayed approval of REC-related contracts for more than two years; in at least one case, the CPUC denied approval. Indeed, more than thirty contracts filed for approval around the same time of the California Contracts are currently pending consideration and approval by the CPUC.[4]

Joint Complaint itself or publicly available documents filed with the Commission or other state regulatory agencies.

[3] <http://www.sce.com/AboutSCE/Regulatory/adviceletters/default.htm>; <http://sdge.com/regulatory/advice_index.shtml.>

[4] The following is a link to a spreadsheet maintained on the CPUC's website indicating a list of RPS projects that are online, under development, and pending CPUC approval. Withdrawn and cancelled projects are also included.

15 On July 2, 2009, the Company provided an updated response to ICNU 2.1, as requested by its terms. That response included additional non-contingent contracts that were executed subsequent to the March 10, 2009, response to ICNU 2.1. The updated response did not include the California Contracts because they remained contingent pending CPUC approval.

16 On August 5, 2009, the parties to the 2009 GRC sent a letter to the Administrative Law Judge (ALJ) indicating that they had reached a settlement in principle and requesting a suspension of the schedule, including discovery. On August 7, 2009, the ALJ suspended the schedule.[5] 2009 GRC, Order 07 (Aug. 25, 2009). As of that date, discovery by all parties stopped.

17 The Settlement itself was filed with the Commission on August 25, 2009. The Settlement included provisions relating to REC revenues. Specifically, the Company agreed to provide a report prior to January 1, 2010, that would include: (1) an explanation of how RECs and associated costs and/or revenues are allocated among PacifiCorp's six states; (2) an explanation of how the Company determines proper disposition of RECs on a total-Company and state-by-state basis; and, (3) a detailed accounting of the total-Company RECs that were sold and the total-Company RECs that were retained for each year from calendar year 2005 through June 2009. Settlement at ¶ 20.

18 The Company also agreed to provide quarterly reports, beginning on March 31, 2010, to Staff, Public Counsel, and ICNU that would describe the Company's management of RECs from June 2009 forward. Settlement at ¶ 21. This report would provide on a total-company, west control area, and Washington-allocated basis: the total monthly generation of RECs by resource, the

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<http://www.cpuc.ca.gov/PUC/energy/Renewables/index.htm>

[5] The ALJ maintained the scheduled public comment hearing and the dates scheduled for the evidentiary hearing so that those dates could be used for a hearing on the settlement.

estimated and actual level of REC transactions on a megawatt-hour basis, and the actual level of REC-related revenues. Settlement at ¶ 21. The Company also agreed to hold periodic meetings as requested by any party to provide additional details on the report. Settlement at ¶ 21.

19 The Settlement Stipulation also specifically stated that: "Nothing in this Stipulation limits or expands the ability of any Party to file for deferred accounting or request that the Commission take any other action regarding PacifiCorp's Washington-allocated RECs. For purposes of any such filing, the Parties agree that this case includes $657,755 in Washington-allocated REC revenues for the 2010 rate effective period." Settlement at ¶ 22.

20 On September 22, 2009, the parties filed testimony in support of the Settlement. Public Counsel's witness, Ms. Donna Ramas, testified that "there was a concern in this case with regard to the level of RECs and with the associated projected revenues from the sale of RECs incorporated in the filing." 2009 GRC, Exhibit No. DR-1T 5:22-6:11. According to Ms. Ramas, to address this uncertainty, the Company agreed to provide the REC reports, which in her opinion "will be very helpful to the parties in monitoring the RECs." 2009 GRC, Exhibit No. DR-1T 6:11-12. ICNU's witness, Mr. Robert M. Meek, also testified that the Settlement included "an important reporting provision regarding the Company's [RECs]." 2009 GRC, Exhibit No. RMM-1T 3:10-12. These reporting provisions "provide[] the parties the practical ability to file for deferred accounting or request that the Commission take another action regarding PacifiCorp's Washington-allocated RECs." 2009 GRC, Exhibit No. RMM-1T 3:12-14.[6]

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[6] Pursuant to WAC 480-07-495(2), the Company requests that the Commission take official notice of the testimony filed by the parties in the 2009 GRC.

21 The WUTC reviewed the Settlement in an evidentiary hearing on October 29, 2009, and adopted the Settlement by its Final Order on December 16, 2009. 2009 GRC, Order 09 (Dec. 16, 2009). Rates became effective January 1, 2010.

22 Meanwhile, after the Settlement was completed and filed with the Commission, the CPUC approved the California Contracts in September and October, 2009, respectively.[7] The Resolutions approving the California Contracts are both substantive orders that exceed twenty pages in length, include substantive legal and factual analysis, and evidence the thoroughness with which the CPUC reviewed these contracts. PacifiCorp began receiving REC revenues under these contracts only after the contracts received regulatory approvals from the CPUC and the contracts became non-contingent.

23 On October 8, 2009, Public Counsel witness Ms. Donna Ramas filed testimony in PacifiCorp's Utah general rate case on behalf of the Utah Office of Consumer Services. *See* Utah Public Service Commission, Docket No. 09-035-23, OCS-2D Ramas 16-29.[8] In that testimony, Ms. Ramas argued for an increase in REC revenues of $5.7 million on a Utah basis, adjusting the per-REC sales price from $3.50 per MWh to $6.57 per MWh. *See* Utah Public Service Commission Docket, No. 09-035-23, Rebuttal Testimony of Steven R. McDougal 5:80-6:115.

24 ICNU's witness Mr. Falkenberg was also a witness for the Office of Consumer Services in PacifiCorp's Utah case. On November 30, 2009, Mr. Falkenberg filed testimony in that docket

[7] The SCE contract was approved on October 15, 2009, by CPUC Resolution E-4264. The SDG&E contract was approved on September 24, 2009, by CPUC Resolution E-4260. These Resolutions are available at the following links and pursuant to WAC 480-07-495(2) the Company requests that the Commission take official notice of these Resolutions: <http://docs.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/107773.pdf> ; <http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/108524.PDF>.

[8] Pursuant to WAC 480-07-495(2), the Company requests that the Commission take official notice of the testimony filed by Donna Ramas, Randall J. Falkenberg, and Steven R. McDougal in Utah Public Service Commission Docket 09-035-23. The relevant testimony is available on the Utah Public Service Commission website, at the following link:<http://www.psc.state.ut.us/utilities/electric/elecindx/2006-2009/0903523indx.html>.

expressly referencing the California Contracts, which he claimed lowered net power costs and provided "an unspecified amount of revenue for renewable energy sales." *See* Utah Public Service Commission Docket No. 09-035-23, OCS 4S Falkenberg 4:103-110. Notably, in the 2009 GRC ICNU sent a data request to the Company specifically requesting permission to use discovery provided to Mr. Falkenberg in his capacity as a witness in that Utah docket. *See* Affidavit of Gregory N. Duvall, Exhibit A.

25 Mr. Falkenberg was also an expert witness for ICNU in the Oregon Transition Adjustment Mechanism, where the Company included the California Contracts in its November 2009 update. *See* Oregon Public Utility Commission Docket UE 207, Net Power Cost Update for PacifiCorp's 2011 TAM.[9] On December 31, 2009, Mr. Falkenberg referenced the California Contract in testimony supporting ICNU's request for deferred accounting arising from a REC-related contract with Nevada Power. *See* Oregon Public Utility Commission Docket UM 1465, ICNU/100, Falkenberg/3, ll. 3-11.[10] Again, in the 2009 GRC, ICNU issued a data request, ICNU 1.48, seeking permission to use all data responses related to net power costs that the Company provided to OCS, WIEC, and ICNU in current and recent cases in Wyoming, Utah, and Oregon. *See* Affidavit of Gregory N. Duvall, Exhibit A.

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[9] Pursuant to WAC 480-07-495(2), the Company requests that the Commission take official notice of the Company's November Update in OPUC Docket UE 207. This update is also available on the OPUC's website at the following link: <http://edocs.puc.state.or.us/efdocs/HAD/ue207had103928.pdf>.

[10] Pursuant to WAC 480-07-495(2), the Company requests that the Commission take official notice of this testimony filed in OPUC Docket UM 1465. Mr. Falkenberg's entire testimony in this docket is available at the following link: <http://edocs.puc.state.or.us/efdocs/HAA/um1465haa145155.pdf>.

26 On March 1, 2010, PacifiCorp filed its Form 10-K, a public document filed with the Securities and Exchange Commission, which indicated that the Company received $44 million in REC revenues in 2009.[11]

27 On April 30, 2010, the Company filed its 2009 Commission Basis Report pursuant to WAC 480-100-257, reflecting 2009 Washington-allocated REC sales of $4.8 million.

28 On May 4, 2010, PacifiCorp filed its 2010 rate case in Washington, Docket UE-100749 (2010 GRC). Mr. Dalley's testimony indicated that total Company REC revenues for 2009 were $50,793,765, or in excess of $4 million on a Washington-allocated basis. 2010 GRC, Exhibit RBD-3 3.5.

III. STANDARD OF REVIEW

29 The Commission's rules provide that a motion to dismiss (modeled after one that would be made in Superior Court pursuant to Civil Rule 12(b)(6) or 12(c)) is appropriate when the pleading the moving party seeks to be dismissed (in this case, the Joint Complaint) fails to state a claim upon which the Commission may grant relief. WAC 480-07-380(1)(a). The Commission will dismiss a complaint for failure to state a claim if it appears that the complainant can prove no set of facts in support of its claim that would entitle it to relief. *Wash. Utils. & Transp. Comm'n v. Advanced Telecom et al.*, Docket UT-033011, Order No. 05 at ¶ 99 (Feb. 12, 2004).[12]

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[11] <http://www.sec.gov/Archives/edgar/data/75594/000007559410000008/pacificorp10k12312009.htm>.

[12] Under Commission rules, a party may also seek dismissal of a pending adjudicative proceeding by motion for summary determination (modeled after one that would be made in Superior Court pursuant to CR 56). WAC 480-07-380(2). A motion for summary determination is appropriate when the pleadings filed in the proceeding, along with any properly admissible evidentiary support, reveal that there is no genuine issue of material fact and that the moving party is entitled to the relief requested as a matter of law. WAC 480-07-380(2); CR 56(c). WAC 480-07-380(1)(a) states: "If a party presents an affidavit or other material in support of its motion to dismiss, and the material is not excluded by the commission, the commission will treat the motion as one for summary determination as provided in" WAC 480-07-380(2)-(3). If the Commission deems PacifiCorp's motion to be more appropriately treated as a motion for summary determination, PacifiCorp has no objection to such treatment and requests that the Commission consider the motion in whichever form is most appropriate. In this case, either procedural vehicle is appropriate for resolution of this case.

IV. ARGUMENT

A. ALL CAUSES OF ACTION FAIL TO STATE A CLAIM FOR REPARATIONS UNDER RCW 80.04.220 BECAUSE THEY ARE BARRED BY THE SIX- MONTH STATUTE OF LIMITATIONS.

30 Each of the Joint Complaint's three causes of action are brought under RCW 80.04.220. *See* Joint Complaint at ¶ 6. RCW 80.04.220 is a "reparations" statute which allows the Commission to order a utility to repay excessive charges in certain circumstances.[13]

31 Claims brought under RCW 80.04.220 are subject to the six-month statute of limitations contained in RCW 80.04.240 for "cases involving the collection of unreasonable rates."[14] *See* *AT&T Commun. et al. v. Qwest Corp.*, Docket UT-051682, Order Affirming Interlocutory Order (Dec. 22, 2006) (hereinafter, *AT&T III*). In the Joint Complaint, ICNU and Public Counsel acknowledge that the RCW 80.04.240 six-month statute of limitations is applicable. Joint Complaint at 6, n 5.

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[13] RCW 80.04.220 provides in full: "When complaint has been made to the commission concerning the reasonableness of any rate, toll, rental or charge for any service performed by any public service company, and the same has been investigated by the commission, and the commission has determined that the public service company has charged an excessive or exorbitant amount for such service, and the commission has determined that any party complainant is entitled to an award of damages, the commission shall order that the public service company pay to the complainant the excess amount found to have been charged, whether such excess amount was charged and collected before or after the filing of said complaint, with interest from the date of the collection of said excess amount."

[14] RCW 80.04.240 states: "If the public service company does not comply with the order of the commission for the payment of the overcharge within the time limited in such order, suit may be instituted in any superior court where service may be had upon the said company to recover the amount of the overcharge with interest. It shall be the duty of the commission to certify its record in the case, including all exhibits, to the court. Such record shall be filed with the clerk of said court within thirty days after such suit shall have been started and said suit shall be heard on the evidence and exhibits introduced before the commission and certified to by it. If the complainant shall prevail in such action, the superior court shall enter judgment for the amount of the overcharge with interest and shall allow complainant a reasonable attorney's fee, and the cost of preparing and certifying said record for the benefit of and to be paid to the commission by complainant, and deposited by the commission in the public service revolving fund, said sums to be fixed and collected as a part of the costs of the suit. If the order of the commission shall be found to be contrary to law or erroneous by reason of the rejection of testimony properly offered, the court shall remand the cause to the commission with instructions to receive the testimony so proffered and rejected and enter a new order based upon the evidence theretofore taken and such as it is directed to receive. The court may in its discretion remand any cause which is reversed by it to the commission for further action. Appeals to the supreme court shall lie as in other civil cases. All complaints concerning overcharges resulting from collecting unreasonable rates and charges or from collecting amounts in excess of lawful rates shall be filed with the commission within six months in cases involving the collection of unreasonable rates and two years in cases involving the collection of more than lawful rates from the time the cause of action accrues, and the suit to recover the overcharge shall be filed in the superior court within one year from the date of the order of the commission."

32 When determining when a claim accrues for purposes of applying the six-month statute of limitations, the Commission applies the "discovery rule" to claims brought under RCW 80.04.220. *AT&T III* at ¶ 37. This rule "does not require a plaintiff to understand all the legal consequences of a claim;" rather, a claim accrues when the "party *should have* discovered salient facts regarding a claim." *Green v. A.P.C.*, 136 Wn.2d 87, 95 (1998) (emphasis in original).

33 When applying the discovery rule, Washington courts apply a "diligent inquiry" standard:

> The general rule in Washington is that when a plaintiff is placed on notice by some appreciable harm occasioned by another's wrongful conduct, the plaintiff must make further diligent inquiry to ascertain the scope of the actual harm. The plaintiff is charged with what a reasonable inquiry would have discovered. "[O]ne who has notice of facts sufficient to put him upon inquiry is deemed to have notice of all acts which reasonable inquiry would disclose." *Id.* at 96 (citations omitted).[15]

34 To support their argument that the Joint Complaint is timely, ICNU and Public Counsel cite *AT&T I.* Joint Complaint at 6, n 5. ICNU and Public Counsel state that the ALJ held in that case "that the complainant's claim for refund accrued as of the day that the contracts upon which their claim relied were made public and thus available to them." *Id.* Thus, ICNU and Public Counsel argue that their claims accrued on or after July 8, 2010, "*i.e.*, the date on which ICNU and Public Counsel received the actual sales contracts" that are the subject of the Joint Complaint (the California Contracts). *Id.*

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[15] *See also Janicki Logging & Constr. Co. v. Schwabe, Williamson & Wyatt, P.C.*, 109 Wn. App. 655, 659 (2001) (""The statute of limitations on an action 'does not begin to run until the cause of action accrues—that is, when the plaintiff has a right to seek relief in the courts [citations omitted]'...[when] the client 'discovers, or in the exercise of reasonable diligence should have discovered the facts which give rise to his or her cause of action.' [citations omitted]...This rule does not require that a plaintiff have knowledge of the cause of action itself; rather, only the 'facts' that give rise to that cause of action must be known to start the running of the statute...[Citations omitted] Still the facts supporting each of the essential elements of the cause of action...must be known before the statute begins to run.").

35 In the Joint Complaint, ICNU and Public Counsel omit the critical fact that the Commission subsequently *reversed* the ALJ's decision in the Initial Order in *AT&T I* with respect to the date on which the claim in that case accrued. In *AT&T Commun. et al. v. Qwest Corp.*, Docket UT-051682, Interlocutory Order at ¶ 20 (June 8, 2006) (hereinafter, *AT&T II)* and again in *AT&T III*, the Commission found that the claim accrued much earlier than the date on which the contracts were published.

36 Specifically, in *AT&T II*, the Commission concluded that the ALJ erred in finding that the accrual date occurred upon publication of the contracts because the "test for accrual . . . is not when the aggrieved party actually discovered the injury, but when the aggrieved party *in the exercise of reasonable diligence* should have discovered the injury." *AT&T II* (citing *Enterprise Timber Inc. v. Wash. Title Ins. Co.*, 79 Wn.2d 479 (1969)) (emphasis in original). Moreover, in *AT&T II,* the Commission specifically rejected the claim that the confidentiality of the subject contracts meant that the claims did not accrue until they were in the public domain. *AT&T II* at ¶ 21.

37 After the parties challenged *AT&T II*, the Commission confirmed its accrual date analysis in *AT&T III.* The Commission reiterated the applicability of the discovery rule, noting: "One who has notice of facts sufficient to prompt a person of reasonable prudence to inquire is deemed to have notice of all the facts that a reasonable inquiry would disclose." *AT&T III* at ¶ 37. When discussing the application of the discovery rule to the facts of the case, the Commission noted also that as of the accrual date the complainants had notice of similar contracts filed by Qwest in Minnesota. Coupled with the fact that the Commission, "entered the order declining to explore the issue, a person of reasonable prudence would realize that a six-month limitations period for

possible damages might apply and that steps should be taken immediately to pursue an individual remedy for possible financial harm. However, AT&T failed to act in 2002. That was not reasonable under the circumstances, for purposes of finding the accrual date." *Id.* at ¶ 39.

38 Here, like the complainant in the *AT&T I-III*, ICNU and Public Counsel failed to act upon receiving notice of the alleged harm. ICNU and Public Counsel filed their original complaint on December 9, 2010.[16] Based upon the discovery rule and RCW 80.04.240, the Joint Complaint is time barred if, before June 9, 2010, ICNU and Public Counsel knew or should have known through the exercise of reasonable diligence that (1) the REC revenues PacifiCorp was receiving during 2010 were in excess of the $657,755 reflected in the Settlement; (2) that the REC sales price was higher than the average sales price of $3.50 per MWh assumed in the 2009 GRC; or (3) that PacifiCorp had entered into and was receiving REC revenue under the California Contracts.

39 Under the analysis dictated by *AT&T II* and *AT&T III*, there is no question that ICNU and Public Counsel knew or should have known these facts through the exercise of reasonable diligence before June 2010 based upon public filings at the Washington Commission. First, on April 30, 2010, the Company filed its 2009 Commission Basis Report pursuant to WAC 480-100-257, reflecting 2009 Washington-allocated REC sales of $4.8 million. Second, the Company's 2010 GRC was filed on May 4, 2010; it included references to Washington-allocated REC revenues in excess of $4 million for 2009.

///

[16] The operative pleading in this case is a complaint filed on January 6, 2011. Complainants have indicated that they believe that for purposes of the statute of limitations the operative complaint's filing date should relate back to the original December 9th complaint even though that complaint was rejected by the Commission. PacifiCorp does not agree that the January 6th complaint should relate back; however, for purposes of this motion this does not matter as the complaint was untimely using either date.

40 There is also evidence that ICNU and Public Counsel knew or should have known of the facts underlying their claims in the fall of 2009, when their witnesses Donna Ramas and Randall Falkenberg filed testimony in PacifiCorp cases in other states addressing REC revenues, REC prices, and the California Contracts. As agents for Public Counsel and ICNU, the knowledge of Ms. Ramas and Mr. Falkenberg regarding PacifiCorp's REC sales should be imputed to Public Counsel and ICNU.[17] *See Busk v. Hoard*, 65 Wn.2d 126, 134-35, 396 P.2d 171 (1964) (knowledge of (or notice to) an agent is imputed to his principal and "in most instances, the time, place or manner in which the agent obtains the knowledge is immaterial as far as charging the principal with it is concerned."); *see also Feature Realty Inc. v. City of Spokane*, 331 F.3d 769, 782 (9th Cir. 2002) (applying Washington law, the Ninth Circuit concluded that "Feature Realty's former lawyer knew of the assurances when they were made . . . and that knowledge is properly attributable to Feature Realty itself."); *see also Veritas Operating Corp. v. Microsoft Corp.*, 562 F.Supp.2d 1141, 1278 (W.D. Wash. 2008) (reviewing Ninth Circuit cases and attributing knowledge of Microsoft attorneys to Microsoft). As the Commission noted in *AT&T II and AT&T III*, the fact that Public Counsel and ICNU became aware of the contracts through a proceeding in another state is immaterial. This is especially true given ICNU's request in the 2009 GRC to use discovery from the Utah and Oregon cases in which Ms. Ramas and Mr. Falkenberg were active.

41 Relying on the *reversed AT&T I*, Complainants argue that their claims did not accrue until July 8, 2010, when ICNU and Public Counsel "received the actual sales contracts." Joint Complaint

[17] Additionally, the fact that ICNU filed for deferred accounting in Docket UM 1465 in Oregon arising from a REC-related contract demonstrates both that ICNU was closely tracking PacifiCorp's REC-related contracts and that ICNU understood the importance of timely filing for deferred accounting if it sought to capture the benefits of such contracts in rates.

at 6, n. 5. This argument lacks merit because the Commission is clear that the "test for accrual . . . is not when the aggrieved party actually discovered the injury, but when the aggrieved party *in the exercise of reasonable diligence* should have discovered the injury." *AT&T II* at ¶ 20. Here, reasonable diligence on the part of ICNU and Public Counsel would have led them to discover their alleged injuries well before June 9, 2010.

B. ALL CAUSES OF ACTION FAIL TO STATE A CLAIM UNDER RCW 80.04.230 FOR OVERCHARGES.

42 Each of the Joint Complaint's three causes of action is also brought under RCW 80.04.230. *See* Joint Complaint at ¶ 6. RCW 80.04.230 is an "overcharge" statute that authorizes the Commission to order a utility to refund an overcharge if it finds that the utility "charged an amount for any service rendered in excess of the lawful rate in force at the time such charge was made."[18]

43 Complainants do not allege, and cannot allege, that PacifiCorp charged them anything other than the rates that were approved by the Commission in the 2009 GRC Final Order. Because Complainants do not assert that they were billed more than the approved rate, they have not stated a claim under RCW 80.04.230.

C. ALL CAUSES OF ACTION FAIL TO STATE A CLAIM UNDER RCW 80.04.210, SEEKING AMENDMENT OF THE COMMISSION'S 2009 GRC ORDER.

44 As an alternative to their requests for relief under RCW 80.04.220 and 80.04.230, Complainants ask the Commission to construe their Joint Complaint as a motion to amend the Final Order in

[18] RCW 80.04.230 states: "When complaint has been made to the commission that any public service company has charged an amount for any service rendered in excess of the lawful rate in force at the time such charge was made, and the same has been investigated and the commission has determined that the overcharge allegation is true, the commission may order that the public service company pay to the complainant the amount of the overcharge so found, whether such overcharge was made before or after the filing of said complaint, with interest from the date of collection of such overcharge."

the 2009 GRC. Joint Complaint at ¶¶ 3 and 25. This request is improper for at least three reasons.

45 First, as a general proposition, collateral attacks on Commission rate orders are prohibited.[19] The Joint Complaint correctly claims that RCW 80.04.210 authorizes the Commission to "alter or amend any order or rule made, issued or promulgated by it." That statute does not, however, authorize such an amendment to occur as the result of a complaint filed under RCW 80.04.110. Indeed the clear language of RCW 80.04.210 contemplates that proceedings to amend Commission orders are distinct from complaint proceedings. RCW 80.04.210 states that the Commission may amend an order only after providing ". . . notice to the public service company affected, and after opportunity to be heard *as provided in the case of complaints* . . ." (emphasis added). Therefore, complaint proceedings are not the proper forum to request an amendment of a Commission rate order and are an improper collateral attack on that order.

46 Second, Complainants' request to amend the 2009 GRC Final Order to permit recovery of REC revenues from 2010 violates the prohibition on retroactive ratemaking. The Commission has observed that "retroactive ratemaking . . . is extremely poor public policy and is illegal under the statutes of Washington State as a rate applied to a service without prior notice and review." *Re Puget Sound Energy*, Docket UE-010410, Order Denying Petition to Amend Accounting Order

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

(Nov. 9, 2001); *see also* RCW 80.28.020. This doctrine "prohibits the Commission from authorizing or requiring a utility to adjust current rates to make up for past errors in projections." *Id.*

47 Because retroactive ratemaking is contrary to Washington law, any amendment to the 2009 GRC Final Order can have a prospective application only. The order in the 2010 GRC is expected to be issued prior to the resolution of this case and that order will necessarily supersede the 2009 GRC Final Order, whether amended or not. See 2010 GRC, Order 01 (May 12, 2010) (April 3, 2011 is the end of the suspension period). Thus, the request will be moot as of the issuance of the Commission's final order in the 2010 GRC.

48 Third, the relief requested by Complainants—for a refund and balancing account—constitutes single-issue ratemaking because Complainants seek a rate adjustment based upon an examination of only one component of PacifiCorp's rates. The Commission generally does not engage in single-issue ratemaking because it violates the matching principle. *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Docket UE-090704, Order 11 at ¶ 153 (Apr. 2, 2010); *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-061546, Order 08 at ¶ 152 (June 21, 2007) ("True-up mechanisms, a form of single issue ratemaking, are not generally favored in utility ratemaking."). The matching principle requires "revenues and costs [to be] balanced at a common point in time, *i.e.* a rate case, to determine fair, just, reasonable and sufficient rates." *Wash. Utils. & Transp. Comm'n v.Avista*, Docket UG-060518, Order 04 at ¶ 19 (Feb. 1, 2007). Single issue ratemaking violates this principle because it sets rates based upon an examination of only one component.[20]

[20] *See Re U.S. West Comm., Inc.*, Docket UT-920085, 3rd Suppl. Order. At 5 (Apr. 15, 1993) ("without considering other aspects of the company's rate structure [this] would amount to single issue ratemaking"); *Re US West*

49 Here, Complainants seek a rate adjustment based upon examination of only REC revenues and therefore they are asking the Commission to engage in single-issue ratemaking.[21] The policies against single-issue ratemaking are particularly compelling in this case because the Company has nearly concluded its 2010 GRC. The Commission now has before it the opportunity to establish just, fair, and reasonable rates for PacifiCorp based upon an examination of all revenues and expenses. In this context, Complainants request for single-issue ratemaking should be rejected.

D. THE FIRST CAUSE OF ACTION FAILS TO STATE A CLAIM.

50 The Joint Complaint's First Cause of Action alleges that the Company's direct case in the 2009 GRC included a pro forma REC revenue adjustment that was improper because it was determined in a manner that they dispute. Because ICNU and Public Counsel can point to no statute or Commission rule that PacifiCorp violated when calculating its pro forma adjustment, they pigeonhole their claim into a violation of RCW 34.05.452 (requiring testimony to be filed under oath), RCW 80.04.130 (requiring utility to bear burden of proof) and WAC 480-07-540 (same). For three reasons, this cause of action fails to state a claim.

Communications, Inc., Docket UT-970766, 14th Suppl. Order at 5 (Mar. 24, 1998) ("the proper means to examine [revenues and expenses] is a general rate case"); *MCI Telecommunications Corp. v. GTE Northwest, Inc.*, Docket UT-970653, Second Suppl. Order (Oct. 22, 1997) ("The Commission has consistently held that these questions are resolved by a comprehensive review of the company's rate base and operating expenses, determining a proper rate of return, and allocating rate changes equitably among ratepayers.");

[21] Complainants may point to Docket UT-020406 to argue that the Commission has departed from its prohibition against single issue ratemaking and allowed a general rate adjustment in a complaint proceeding under RCW 80.04.110 when the complaint alleges violations of law. *See e.g. AT&T Comm. of the Pacific Northwest Inc. v. Verizon Northwest Inc.*, Docket UT-020406 Eleventh Supp. Order at 5 (Aug. 12, 2003). In that case, the Commission did authorize a change to Verizon's access charges in a complaint proceeding in part because the complainant "state[d] several statutory bases for its complaint and alleged violations of statute, rule, and federal law." However, in a subsequent case, the Commission limited its holding in Docket UT-020406 to the specific facts of that case. In Docket UT-063013 the Commission acknowledged that its holding in Docket UT-020406 was a departure from the Commission's "usual caution about 'single-issue ratemaking.'" *McLeodUSA Telecom. Services, Inc. v. Qwest Corp.*, Docket UT-063013, Order 04 (Feb. 16, 2007). In Docket UT-063013 the Commission refused to engage in single-issue ratemaking in a docket initiated by a complaint and distinguished Docket UT-020406 because the record in that case was voluminous and even Verizon acknowledged that their rates were too high.

51 First, there is no actionable claim under the statutes cited. As in all rate cases before the Commission, the Company submitted its testimony under oath and assumed the burden of proof in the 2009 GRC. The failure of a utility to meet these basic obligations does not give rise to a claim for damages independent of the rate case filing; instead it creates a potential procedural deficiency in the rate case filing.

52 Second, although all of Complainants' reparations claims are barred by the six-month statute of limitations, the first cause of action is specifically time barred. This claim alleges that the Company's pro forma REC adjustment in its filed 2009 GRC, *i.e.* the adjustment in Exhibit No. RBD-3, "did not reflect data within the Company's possession regarding the known and measurable REC sales prices it expected to receive during the rate effective period." Joint Complaint at ¶ 20.[22] The claim asserts that the "response to ICNU 2.1 indicates that, during 2008, PacifiCorp entered into REC sales for that year and 2009 at materially different prices than the $3.50 relied upon for its pro forma adjustment" in Exhibit No. RBD-3. Joint Complaint at ¶ 10. In other words, Complainants' allege that upon receipt of the Company's response to ICNU 2.1 on March 10, 2009, they became aware that the Company's filed pro forma adjustment was not supported by the data contained in the response to ICNU 2.1. On its face, this claim accrued on March 10, 2009—nearly *twenty-one months* before the Joint Complaint was filed.

53 Third, to the extent that the first cause of action alleges that the Company's pro forma adjustment for RECs should have included the California Contracts, this would not have been a proper "known and measurable" adjustment as defined by WAC 480-07-510(3)(e)(iii). The contracts were subject to approval by the CPUC and were therefore not "known" at the time of the

[22] The Joint Complaint has an unnumbered paragraph between paragraphs 20 and 21. This citation is to the unnumbered paragraph, which will be referenced herein as paragraph 20.

proceeding. *See Wash. Utils. & Transp. Comm'n v. Avista*, Docket UE-090134, Order 10 at ¶¶110-112 (Dec. 22, 2009).

E. THE SECOND AND THIRD CAUSES OF ACTION FAIL TO STATE A CLAIM.

54 The Joint Complaint's second cause of action alleges that the Company violated WAC 480-07-405(7) and RCW 80.28.010. WAC 480-07-405 is the Commission's data request rule. Subsection (7) governs responses to data requests and requires that "a party to whom a data request is directed must provide a full response to the data request." RCW 80.28.010(1) requires utility rates to be "just, fair, reasonable, and sufficient."

55 Complainants allege that the Company "failed to provide accurate and complete responses to" ICNU 2.1 and 2.2 which allowed the Company to collect unjust, unfair, and unreasonable rates. Joint Complaint at ¶¶ 21-22. The second cause of action fails to state a claim because the clear and unambiguous text of ICNU 2.1 and 2.2 did not ask for the information that Complainants now allege was not produced.

56 Complainants allege that ICNU 2.1 "expressly asked for the most current REC sales prices" and asked for PacifiCorp to include "executed sales contracts." Joint Complaint at ¶ 23. Both of these allegations are contradicted by the clear text of the actual data request, which sought only "actual green tag sales and revenue received by PacifiCorp since 2005." Complainants also claim that PacifiCorp breached its duty to provide a complete response because "PacifiCorp understood the data request to require information regarding all executed sales contracts rather than merely revenue received to date," although the request itself did not include this language. PacifiCorp included forecast REC revenues for 2009 for non-contingent contracts because that information was in the Company's REC spreadsheet. Provision of this information does not

constitute an acknowledgement that the Company understood the data request to be asking for more than it stated. *See Wash. Utils. & Transp. Comm'n v. Verizon*, Docket UT-040788, Order 7 (Aug. 24, 2004).

57 With respect to ICNU 2.2, this data request asked the Company to "please provide all documents to support the pro forma [REC] sales price" included in Exhibit RBD-3 of the Company's testimony, which was filed on February 9, 2009. Joint Complaint Exhibit C at 7. In response to this request, the Company provided eight pages of analysis describing REC transactions from 2006 and 2007 that the Company used to support the REC revenue included in its direct case.

58 Complainants allege that "the Company provided no support for its decision to rely on 2007 sales data, nor did it revise or supplement the response with information regarding the actual price it knew it would receive during 2010 firm executed sales contracts." Joint Complaint at ¶ 22. For the Company's response to ICNU 2.2 to be inaccurate or incomplete as alleged, Complainants must allege that the Company in fact relied upon other data to support the pro forma sales price included in its direct case. The Joint Complaint does not include such an allegation.

59 The third cause of action alleges that the Company violated WAC 480-07-405(8) because the Company did not "revise its initial filing to correct for misstatements or provide excluded information," and failed to supplement its data responses upon learning that the response was "no longer correct or complete." Joint Complaint at ¶ 24. WAC 480-07-405(8) requires parties to "immediately supplement any response to a data request . . . upon learning that the prior response was incorrect or incomplete when made or upon learning that a response, correct and complete when made, is no longer correct or complete." Again, the crux of this cause of action

is Complainants' insistence that the Company had a duty to provide information that was not actually requested. As discussed above, the information that Complainants now complain was not provided was also not requested.

60 With respect to ICNU 2.1, the request sought "actual green tag sales and revenue received by PacifiCorp" and requested updates "as PacifiCorp executes additional sales throughout this proceeding." PacifiCorp did not receive any REC revenue under the California Contracts until after discovery was suspended and the Settlement was finalized and filed with the Commission. As of the filing of the Settlement, the California Contracts were still contingent and awaiting CPUC approval.

61 With respect to ICNU 2.2, the Company did not rely on the California Contracts to support its pro forma REC revenue price in its filed case because those contracts did not exist when the case was filed.

62 Moreover, the allegation that this rule requires the Company to "revise its initial filing to correct for misstatements or provide excluded information," is inapplicable. This rule applies to data requests, not pre-filed testimony.

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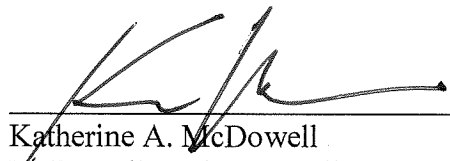
V. CONCLUSION

63 Based upon all of the foregoing, PacifiCorp respectfully requests that the Commission dismiss the Joint Complaint with prejudice.

DATED: February 7, 2011.

Respectfully Submitted,



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Attorneys for PacifiCorp

1 **BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

PUBLIC COUNSEL AND THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Joint Complainants, vs. PACIFICORP d.b.a. PACIFIC POWER & LIGHT CORP., Respondent.	**DOCKET UE-110070** **AFFIDAVIT OF GREGORY N. DUVALL**

STATE OF OREGON)
) ss
County of Multnomah)

I, Gregory N. Duvall, being first duly sworn on oath, depose and say:

1. My name is Gregory N. Duvall, my business address is 825 NE Multnomah St., Suite 600, Portland, Oregon 97232. I am employed by PacifiCorp (or the Company) and my present position is Director, Long-Range Planning and Net Power Costs.

2. The purpose of this affidavit is to provide additional background and context for the Motion to Dismiss Joint Complaint filed by the Company on February 7, 2011.

3. The Company's response to the Industrial Customers of Northwest Utilities' (ICNU) Data Request 2.1 (ICNU 2.1) in Docket UE-0902050 (2009 GRC) consisted of a spreadsheet listing and describing every contract pursuant to which PacifiCorp was either buying or selling Renewable Energy Credits (RECs) since January 1, 2005, as requested by ICNU 2.1. The spreadsheet was a working document utilized by the Company to track its REC

1 transactions. PacifiCorp treats contracts requiring regulatory approval as contingent until it has
2 received all necessary, final regulatory approvals.

3 4. When responding to ICNU 2.1, the Company never understood the request to ask
4 for the current REC sales price or the identification of all executed contracts under which the
5 Company was either buying or selling RECs.

6 5. In May, 2009, PacifiCorp entered into two new REC sales contracts with San
7 Diego Gas & Electric (SDG&E) and Southern California Edison (SCE) (California Contracts).
8 Prior to becoming effective, the California Contracts required the purchasing utilities (SDG&E
9 and SCE) to obtain approval from the California Public Utilities Commission (CPUC). The
10 SDG&E and SCE contracts were filed for approval with the CPUC on July 1, 2009, and June 5,
11 2009, respectively. The CPUC did not approve these contracts until the fall of 2009, after the
12 Settlement Stipulation was filed in the 2009 GRC.

13 6. The CPUC's review and approval process was a substantive and important step in
14 removing the contingency which would allow for finalizing the California Contracts. The
15 Company did not presume that approval of the California Contracts would be granted as a matter
16 of course or in a particular time frame.

17 7. Attached hereto as Exhibits A are ICNU data requests from the Company's 2009
18 GRC: ICNU's Tenth Set of Data Requests to PacifiCorp and the Company's response to ICNU
19 Data Request 1.48. These requests sought to use discovery from PacifiCorp cases in other states
20 in the 2009 GRC.

21 I declare under penalty of perjury under the laws of the state of Oregon that the foregoing
22 is true and correct based on my information and belief.

SIGNED this 7th day of February, 2011, at Portland, Oregon.

Signed: Gregory N. Duvall

SUBSCRIBED AND SWORN to before me this 7th day of February, 2011.

Dianne Balch
Notary Public, State of Oregon
My Commission Expires 12-26-2011

OFFICIAL SEAL
DIANNE BALCH
NOTARY PUBLIC-OREGON
COMMISSION NO. 424502
MY COMMISSION EXPIRES DEC. 26, 2011

Davison Van Cleve PC
Attorneys at Law
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Suite 400
333 SW Taylor
Portland, OR 97204

July 28, 2009

Via Electronic and U.S. Mail

Data Request Response Center
PacifiCorp
825 N.E. Multnomah, Ste. 800
Portland, OR 97232

Re: In the Matter of WUTC v. PacifiCorp
Docket No. UE-090205

To the Data Request Response Center:

Enclosed please find the Industrial Customers of Northwest Utilities' ("ICNU") Tenth Set of Data Requests to PacifiCorp in the above-referenced matter. Please respond to these data requests in ten business days, and provide your responses by no later than, Tuesday, August 11, 2009, to this office, with a copy to Randy Falkenberg.

For the definitions and instructions that apply to these data requests, please refer to ICNU's First Set of Data Requests to PacifiCorp, dated February 18, 2009.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Brendan E. Levenick
Brendan E. Levenick

cc: Service List

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET NO. UE-090205
Complainant,	)	THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES' TENTH SET OF DATA REQUESTS TO PACIFICORP
v.	)	
PACIFICORP d/b/a PACIFIC POWER & LIGHT COMPANY,	)	
Respondent.	)	

Dated: July 28, 2009

Please provide the responses to these Data Requests by Tuesday, August 11, 2009, to:

Irion A. Sanger
Davison Van Cleve, P.C.
333 S.W. Taylor
Suite 400
Portland, OR 97204
(503) 241-7242
ias@dvclaw.com

Randall Falkenberg
RFI Consulting
PMB 362
8343 Roswell Road
Sandy Springs, GA 30350
(770) 379-0505
consultrfi@aol.com

DATA REQUESTS

10.1 Please provide copies of any and all data requests (formal or otherwise) submitted to you by any party to this proceeding and your corresponding responses to those data requests. This is an ongoing request.

10.2 Does the Company agree to allow ICNU to use discovery responses for the following case: Utah PSC Docket No. 09-035-23? If not, please provide a copy of the net power cost related data requests and all MDR's filed by the Company in that case.

10.3 Please provide a copy of all documents and workpapers used to create the information shown in the 2010 Test Year NPC workbook, tab Hermiston.

10.4 Please provide any corrections, and documents supporting any corrections or other changes to the Hermiston fuel costs figures used in the NPC workbook for the 2010 Test Year, tab Hermiston.

UE-090205/PacifiCorp
March 4, 2009
ICNU Data Request 1.48

ICNU Data Request 1.48

Please provide all CCS, WIEC and ICNU discovery and data responses related to Net Power Cost issues produced by the Company in current and recent cases in Wyoming, Oregon and Utah. Alternatively, does the Company agree to allow ICNU to use such information in this docket in Mr. Falkenberg's possession, subject to appropriate confidentiality treatment and reservation of the Company's right to object on the basis of relevance?

Response to ICNU Data Request 1.48

ICNU may use the Company's responses in Mr. Falkenberg's possession, related to net power cost issues, and which were provided to:-

Utah

- Utah Committee of Consumer Services (CCS) in the following current and prior cases in Utah,
  - Utah Docket: 08-035-38 (2008 general rate case)
  - Utah Docket: 07-035-93 (2007 general rate case)

Wyoming

- Wyoming Industrial Energy Consumers (WIEC) in recent and prior cases in Wyoming,
  - Wyoming Docket: 20000-341-EP-09 (2009 power cost adjustment mechanism case)
  - Wyoming Docket: 20000-333-ER-08 (2008 general rate case)
  - Wyoming Docket: 20000-315-ER-08 (2008 power cost adjustment mechanism case)
  - Wyoming Docket: 20000-277-ER-07 (2007 general rate case)

Oregon

- Industrial Customers of Northwest Utilities (ICNU) in recent and prior cases in Oregon,
  - Oregon Docket: UE 179 (2007 general rate case)
  - Oregon Docket: UE 199 (2008 transition adjustment mechanism case)
  - Oregon Docket: UE 191 (2007 transition adjustment mechanism case)

The Company reserves the right to assert evidentiary objections regarding the use of such materials in this docket.

To use discovery requests and responses from cases other than those listed, please make a request specifying the particular docket numbers of interest.

UE-090205/PacifiCorp
March 4, 2009
ICNU Data Request 1.48

Use of the Company's confidential data provided in the above-referenced proceedings will be subject to maintaining the confidentiality of such data on the terms and conditions of protective orders and confidentiality agreements in those proceedings. The use of confidential responses from other proceedings is also subject to the terms and conditions of the protective order in this docket.

PREPARER: Cathie Allen

SPONSOR: N/A

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE AND THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Joint Complainants, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT CORP. Respondents.	Docket No. UE-110070 ICNU AND PUBLIC COUNSEL'S RESPONSE IN OPPOSITION TO PACIFICORP'S MOTION TO DISMISS JOINT COMPLAINT

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I. INTRODUCTION

1 Pursuant to WAC 480-07-380(1)(c), WAC 480-07-380(2)(c) and the February 15, 2011 Notice Setting Due Date for Response, the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Washington State Attorney General's Office ("Public Counsel") provide the following Response in Opposition to PacifiCorp's Motion to Dismiss Joint Complaint ("Motion to Dismiss") and request oral argument on the Motion.

2 As discussed further in this Response, dismissal of the Joint Complaint is precluded because there are material facts in dispute. Moreover, the allegations contained in the Joint Complaint are not time-barred and properly state claims for which the Washington Utilities and Transportation Commission ("Commission") may grant relief. Finally, allowing ICNU and Public Counsel to pursue the allegations raised in the Joint Complaint is in the public interest, as it will result in identification and correction of amounts PacifiCorp has overcharged customers through inaccurate and incomplete representation of renewable energy credit ("REC") revenue data in its 2009 general rate case,[1/] ("*2009 GRC*"). Accordingly, as matter of law PacifiCorp's Motion to Dismiss must be denied.

II. BACKGROUND

3 ICNU and Public Counsel provided a thorough summary of the factual background of this dispute in the Joint Complaint. ICNU and Public Counsel limit this section to providing a brief summary of the procedural history of this case.

4 On December 9, 2010, ICNU and Public Counsel filed a Joint Complaint alleging violations of law and requesting, among other relief, damages based on PacifiCorp's

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1/ *WUTC v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket No. UE-090205.

misrepresentations during the *2009 GRC* regarding its 2010 (rate-effective period) REC revenue. Specifically, PacifiCorp failed to disclose in discovery, in its testimony, and in the evidentiary hearing the accurate amount of REC revenue that it would receive in 2009 and 2010 that include several contracts with California utilities ("California Contracts") that were entered into during 2009. During PacifiCorp's 2010 general rate case ("*2010 GRC*"), ICNU and Public Counsel obtained the California Contracts in discovery that was designated "highly confidential."[2/]

5 Prior to filing the Joint Complaint, ICNU and Public Counsel obtained PacifiCorp's permission to reference highly confidential information received in the *2010 GRC*. The Joint Complaint, as originally filed, contained information that PacifiCorp claims is highly confidential, including the REC prices and REC revenues that PacifiCorp knew it would receive during the effective rate period. Subsequent to the initial filing of the Joint Complaint, PacifiCorp withdrew its authorization for ICNU and Public Counsel to use the highly confidential information and demanded that ICNU and Public Counsel re-file the Joint Complaint without reference to highly confidential information. Despite disagreement as to any actual defects in the initial filing, and without issuing an order formally declaring that the Joint Complaint was defective as filed, the Commission through the Chief Administrative Law Judge did not serve the Joint Complaint on the Company and required that ICNU and Public Counsel re-file the Joint Complaint.

6 ICNU and Public Counsel amended and re-filed the Joint Complaint on January 6, 2011, and the Commission served the Joint Complaint on the Company. PacifiCorp requested and received an extension of time to respond to the Joint Complaint, and filed its Answer and

2/ *WUTC v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket No. UE-100749.

Motion to Dismiss on February 7, 2011.

III. STANDARD OF REVIEW

7 PacifiCorp has filed a motion for summary determination that is styled as a motion to dismiss. The Commission's rules state that:

> If a party presents an affidavit or other material in support of its motion to dismiss, and the material is not excluded by the commission, the commission will treat the motion as one for summary determination as provided in subsections (2) and (3) of this section.[3]

8 PacifiCorp's Motion to Dismiss was filed with the affidavit of Gregory N. Duvall, which has not been excluded. Accordingly, the Motion to Dismiss must be treated as a motion for summary determination under the Commission's rules. The rules governing a motion for summary determination are WAC 480-07-380(2) and Washington Superior Court Civil Rule ("CR") 56(c). Evaluation of a motion for summary determination requires two levels of inquiry.[4] First, the Commission must consider whether there are disputed facts in the case, and may not grant summary determination if there are *any* material facts in dispute.[5] If the Commission finds that there is no dispute as to any material facts, the Commission must view the facts alleged in the complaint "in the light most favorable to the non-moving party."[6] The Commission may not grant the motion for summary determination unless reasonable persons could not disagree that the moving party, PacifiCorp, is entitled to a judgment as a matter of law.[7]

9 If the Commission excludes the affidavit of Mr. Duvall, or otherwise regards PacifiCorp's Motion as a motion to dismiss rather than a motion for summary determination, the

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3/ WAC 480-07-380(1)(a).

4/ *Judd v. AT&T Communications of the Pacific Nw., Inc. and T-Netix, Inc.*, Docket No. UT-042022, Order No. 23 ¶26 (Apr. 21, 2010).

5/ *Activate, Inc., v. State, Dept. of Revenue*, 150 Wn.App. 807, 812, 209 P.3d 524 (2009).

6/ *Id.* (*citing Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005)).

7/ *Id.*

standards applicable to a motion made under CRs 12(b)(6) and 12(c) apply.[8] In its evaluation of a motion to dismiss, the Commission must assume all facts in the non-moving party's complaint are true and may even consider hypothetical facts supporting the non-moving party's claims.[9] The motion may be granted only if, despite consideration of facts in the light most favorable to the plaintiff, the facts alleged will not support the claims contained in the complaint. A motion to dismiss made under CR 12(b)(6) is "granted 'sparingly and with care' and, as a practical matter, 'only in the unusual case in which plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief.'"[10]

10 Under either standard, the Commission must deny the Motion if it finds that there are disputed issues of fact and must view the facts alleged in the Complaint in the light most favorable to ICNU and Public Counsel. Specifically, there are numerous material facts in dispute, including whether PacifiCorp withheld key information requested in discovery that resulted in a settlement agreement that failed to properly account for REC revenues. This issue of fact, if viewed as accurate in the Complaint, is sufficient to defeat the Motion for Summary Disposition.

IV. ARGUMENT

11 The allegations presented in the Joint Complaint involve disputed questions of fact, and the Commission should deny PacifiCorp's Motion to Dismiss to allow full development of an evidentiary record and to provide the relief requested in the Joint Complaint. Even at this time, ICNU and Public Counsel still do not know the full amount of REC revenues that PacifiCorp has earned and wrongfully retained during the 2010 rate-effective period for the *2009*

8/ WAC 480-07-380(1)(a).
9/ *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007).
10/ *Id.* (*citing Hoffer v. State*, 110 Wn.2d 415, 420, 755 P.2d 781 (1988)).

GRC. PacifiCorp's underrepresentation of REC revenue data in the *2009 GRC* must be addressed, because PacifiCorp's customers, not its shareholders, are entitled to the full benefits of REC revenues, as ratepayers have funded those renewable facilities.[11] PacifiCorp has acknowledged that: "customers are generally entitled to a revenue credit for REC sales. The Company does not contest this premise."[12] Additionally, PacifiCorp has admitted that it earned significantly more REC revenue during the 2010 rate effective period as compared to its representations in the *2009 GRC*.[13] Fairness requires a full investigation of PacifiCorp's failure to disclose its 2010 REC revenues during the *2009 GRC* and granting appropriate treatment of those revenues.

A. The Allegations Raised in the Joint Complaint Are Not Time-Barred

12 PacifiCorp argues that all of ICNU and Public Counsel's causes of action under RCW 80.04.230 are barred by the six-month statute of limitations applicable to such claims.[14] A statute of limitations is an affirmative defense and, therefore, the party asserting it has the burden to prove the facts establishing it.[15] In calculating the time, the Commission should apply the December 9, 2010 date as the filing date for the Complaint. However, as described below, even the later January 6, 2011 filing date is not time-barred.

13 As discussed below, PacifiCorp has not met its burden. Instead, PacifiCorp has offered only unfounded and factually incorrect arguments—based on a misinterpretation of the

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11/ *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) ("*PSE REC Petition*") (recognizing that, absent unusual or extraordinary circumstances, REC revenues should be credited to ratepayers).

12/ *2010 GRC*, Duvall, Exh. No. GND-5T at 8:3-6.

13/ *2010 GRC*, Cross Examination Testimony of R. Bryce Dalley, TR. 369-370 (Jan. 25, 2011).

14/ Motion to Dismiss ¶¶30-41.

15/ *Brown v. Prowest Transp. Ltd.*, 76 Wn.App. 412, 419, 886 P.2d 223, 228 (1994) (*citing Haslund v. Seattle*, 86 Wash.2d 607, 547 P.2d 1221 (1976)).

AT&T orders and a strained and illogical application of agency law—that do little more than confuse the issues and distract from the central concerns in this case.

1. PacifiCorp Has Not Met its Burden to Prove That Any of ICNU and Public Counsel's Claims are Time-Barred

a. Standard for Asserting a Statute of Limitations Affirmative Defense

14 To be granted summary determination, a moving party must show that there are no issues of material fact regarding when the non-moving party knew or should have known all elements of its claims.[16] Washington precedent requires that "the facts supporting *each* of the essential elements of the cause of action... must be known before the statute begins to run."[17] The moving party's burden cannot be supported by argument alone.[18] Thus, PacifiCorp bears the burden of demonstrating through actual evidence that each of the elements essential to ICNU and Public Counsel's claims were known, or should have been known, six months prior to the initial filing of the Joint Complaint. In this case, for ICNU and Public Counsel's claims to be time-barred, PacifiCorp must provide evidence that, prior to June 9, 2010 or July 6, 2010, depending upon which filing date the Commission applies, ICNU and Public Counsel knew or should have known all facts essential to each element of their claims. PacifiCorp has not done so.

2. PacifiCorp Inaccurately Characterizes the Essential Elements of ICNU and Public Counsel's Claims

15 PacifiCorp argues that the essential elements, i.e., the facts that ICNU and Public Counsel knew or should have known to bring their claims, are as follows: (1) the REC revenues

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16/ *Green v. A.P.C.*, 136 Wn.2d 87, 100-01, 960 P.2d 912, 918 (1998) (reversing the lower court's summary judgment because the moving party did not provide sufficient evidence "upon which the trial court could have properly relied in concluding [that the non-moving party] should have known" the facts essential to her claims).

17/ *Janicki Logging & Construction Co., Inc. v. Schwabe, Williamson & Wyatt, P.C.*, 109 Wn.App. 655, 659-60, 37 P.3d 309, 312 (2001) (emphasis original).

18/ *See Green*, 136 Wn.2d at 100, 960 P.2d at 918 (holding that summary judgment was improper where the moving party offered only the argument of counsel which "does not constitute evidence").

PacifiCorp was receiving in 2010 were in excess of the $657,755 reflected in settlement;[19] (2) REC prices were higher than the average sale price of $3.50 per-MWh;[20] *or*, (3) that PacifiCorp had entered into and was receiving revenue under the California Contracts.[21]

16 A plain reading of the Joint Complaint reveals that none of these three facts alone sufficiently supports the claims asserted therein.[22] This is because the claims center on when PacifiCorp had knowledge of the California Contracts and their impact on Washington revenues, and, therefore, whether PacifiCorp had a duty to provide this information to the Commission and to the parties. The Joint Complaint shows that ICNU and Public Counsel's claims actually rely on a different set of facts, none of which could be gleaned from those listed by PacifiCorp. The actual essential facts include: (1) the *dates* on which the California Contracts were signed by PacifiCorp; (2) the specific per-REC price provided for in the California Contracts; and (3) the extent to which the California Contracts themselves would impact 2010 Washington REC revenues.[23]

17 The first and second essential facts could only reasonably be ascertained from seeing the complete California Contracts, which the record shows were first provided to ICNU and Public Counsel in Washington on July 8, 2010, and September 9, 2010, respectively. However, the last essential fact could not be known without seeing the complete contracts *and* the 2010 1st Quarter REC Report, provided on July 28, 2010, which provided total revenues associated with the California Contracts and the allocation to Washington. PacifiCorp has failed

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19/ Notably, PacifiCorp provides *no* evidence of where Public Counsel or ICNU could have learned of its actual 2010 REC revenues before the Company filed its 2010 1st Quarter REC Report on July 28, 2010.
20/ PacifiCorp gives no timeframe for this element.
21/ Motion to Dismiss ¶38.
22/ *See* Joint Complaint ¶¶20-24.
23/ *See id.*

to provide evidence of how the second and third facts could have been drawn from any source other than the 2010 1st Quarter REC Report, and has therefore failed to show how ICNU and Public Counsel could have known, or should have known, all of the essential facts prior to June 9, 2010. To be clear, however, neither ICNU nor Public Counsel concede that the full amount of 2010 REC revenues are known from this 2010 1st Quarter REC Report. Thus, PacifiCorp is not entitled to summary determination on these grounds.[24/]

3. PacifiCorp has not shown that the claims could have accrued prior to July 28, 2010, for ICNU or September 9, 2010, for Public Counsel

18 As mentioned above, the essential elements of ICNU and Public Counsel's claims rely on multiple pieces of information, and thus, the claims could not accrue at a single occurrence, but rather upon at the very least the provision of the complete Contracts *and* the 2010 1st Quarter REC Report. Conversely, PacifiCorp wrongly argues that earlier-filed documents—specifically, its 2009 Form 10-K, the Commission Basis Report, and the *2010 GRC*, each of which was filed prior to June 9, 2010—were sufficient bases for the claims to accrue. Additionally, PacifiCorp also wrongly argues that Donna Ramas's and Randall Falkenberg's participation and filings in other states support its argument that ICNU and Public Counsel's claims accrued prior to June 9, 2010. Further, it is absurd to assume *actual* knowledge based on cases from other jurisdictions. Ironically, PacifiCorp frequently complains if there is an attempt to use data from one jurisdiction to another without its explicit permission.

a. The Claims Rely on Multiple Pieces of Information and Therefore Could Not Accrue at a Single Occurrence

19 Only after all of the following occurrences could both ICNU and Public Counsel,

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24/ The earliest possible dates upon which the claims could have accrued are therefore July 28, 2010, for ICNU and September 9, 2010, for Public Counsel, both of which are well within the most stringent application of the statute of limitations. *See* Joint Complaint at n. 5.

with reasonable diligence, pursue the claims asserted in the Joint Complaint: (1) ICNU received the California Contracts in Washington on July 8, 2010; (2) PacifiCorp filed the 2010 1st Quarter REC Report on July 28, 2010, demonstrating the potential impact of the California Contracts on 2010 Washington REC revenues; and, (3) Public Counsel received the California Contracts on September 9, 2010. Again, this is not to say that even today ICNU and Public Counsel possess complete and accurate data on the REC revenue amounts.

20 The California Contracts provided ICNU and Public Counsel with knowledge of the date on which the contracts were executed and the per-REC price, but contained no information regarding the amount of revenue PacifiCorp could expect to receive from those contracts on a Washington-basis during the 2010 rate-effective period. Thus, ICNU's possession of the contracts alone could not have triggered accrual of the claims asserted in the Joint Complaint. It was only upon receipt of *both* the contracts *and* the 2010 1st Quarter REC Report that ICNU and Public Counsel could have had any reason to believe that PacifiCorp had significantly understated its expected 2010 REC revenue, thus, causing ratepayers material injury that is actionable under Washington statutes. Indeed, at no point in its Motion to Dismiss does PacifiCorp show where else, besides the 2010 1st Quarter REC Report, ICNU and Public Counsel could have gained knowledge regarding the Company's actual or expected 2010 revenues on a Washington-basis.

b. PacifiCorp Has Not Shown that the Claims Accrued Upon the Filing of PacifiCorp's 2009 Form 10-K, the Commission Basis Report, or the *2010 GRC*

21 A party asserting a statute of limitations defense based on the "discovery rule" must provide actual evidence of when knowledge of the claims did or should have accrued.[25]

[25] *See Janicki Logging*, 109 Wn.App. at 659-60, 37 P.3d at 312-13.

PacifiCorp argues that ICNU and Public Counsel could have, or should have, learned the essential elements of the claims from its 2009 Form 10-K, Basis Report, or *2010 GRC*, but provides no evidence that either party had actual possession of these documents.[26] Further, none of these documents show the REC revenue for 2010 on a Washington basis.

22 A party cannot seek to dismiss a case on some vague basis that the information that PacifiCorp claims on the one hand is highly confidential, but, in this context, is in the public domain. As PacifiCorp admits, the Form 10-K only gave a total-Company 2009 REC revenue number[27] and provides no information regarding the California Contracts or the revenues PacifiCorp generated from those contracts in 2010. Moreover, the Basis Report and *2010 GRC* show only the amount of REC revenues generated *in 2009*. PacifiCorp fails to address or offer any evidence of how either ICNU or Public Counsel *should* have gleaned from this information any facts regarding the California Contracts or facts regarding the Company's 2010 REC revenue.

4. Expert Witnesses' Participation and Filings in Other States Does Not Meet the Actual Knowledge Requirement

23 PacifiCorp argues that Public Counsel and ICNU should have known about the alleged violations when Donna Ramas and Randall Falkenberg filed testimony on behalf of the Utah Office of Consumer Services in PacifiCorp's 2009 Utah general rate case, or at the time

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26/ Motion to Dismiss ¶¶26-28, 38.

27/ *Id.* at ¶26 (stating that the 10-K "indicated that the Company received $44 million in REC revenues in 2009").

that Mr. Falkenberg filed testimony in a 2009 Oregon power cost proceeding.[28] Once again, PacifiCorp fails to provide any evidence of actual knowledge resulting from the Utah case. PacifiCorp relies on principles of agency law to argue that knowledge gained by Ms. Ramas and Mr. Falkenberg in these other jurisdictions may be imputed to Public Counsel and ICNU. However, as discussed below, these arguments are completely without basis in fact or law.

a. Expert Witnesses Are Not Agents

24 An agency relationship may be implied when "two parties consent that one shall act under the control of the other."[29] In litigation, the party asserting an implied agency relationship bears the burden of proving the existence of such a relationship.[30] In order to find implied agency, the party asserting the agency must show: (1) an agreement between the parties to consent to the agency relationship; *and* (2) the right of the principal to control the manner of the agent's performance.[31] The element of control is essential to implied agencies.[32] Neither element is met here. In this case, PacifiCorp presents *no evidence* regarding the nature of the relationships between Ms. Ramas and Public Counsel and between Mr. Falkenberg and ICNU. This lack of evidence alone is enough to disregard any argument regarding when either Ms. Ramas or Mr. Falkenberg might have known something material to ICNU and Public Counsel's claims.

28/ *Id.* at ¶¶23-25. In Exhibit A to the Affidavit of Greg N. Duvall, accompanying the Motion to Dismiss, PacifiCorp suggests that ICNU's Data Request No. 1.48 somehow incorporated information in Utah case (Docket No. 09-035-23) and Oregon proceedings (UE 207 and UM 1465) discussed directly above. This is false and misleading. Data Request 1.48 does not ask to use any information from the Utah or Oregon Cases. Moreover, the data request was issued *before* the Oregon proceedings even began, and therefore could *not possibly* have incorporated any information from those cases. Moreover, ICNU Data Request No. 10.2, included in Mr. Duvall's affidavit, which *does* request permission to use information from Utah Docket No. 09-035-23 *was never answered as discovery was suspended before the due date.*

29/ *Rho Co., Inc. v. Dep't of Revenue,* 113 Wn.2d 561, 570, 782 P.2d 986, 991 (1989).

30/ *Hewson Constr., Inc. v. Reintree Corp.,* 101 Wn.2d 819, 823, 685 P.2d 1062 (1984).

31/ *See State v. Garcia,* 146 Wn.App. 821, 827-28, 193 P.3d 181, 184 (2008).

32/ *See id.*

25 Indeed, there is no set of facts could show that either Ms. Ramas or Mr. Falkenberg were or are agents of Public Counsel or ICNU because expert witnesses are generally not agents of their clients, even during the term of their contract. Numerous courts have explained why this is so. The Supreme Court of Illinois stated: "Excepting for fraud, the employer can influence but cannot control the expert's thought processes. Thus, the control element, so crucial to agency, is at all times missing."[33] The Third Circuit likewise stated: "Since an expert witness is not subject to the control of the party opponent with respect to consultation and testimony he or she is hired to give, the expert witness cannot be deemed an agent."[34] There is a long line of cases finding that expert witnesses are not agents.[35]

b. Ms. Ramas' and Mr. Falkenberg's Participation in Proceedings in Utah is Outside of the Scope of their Work on Behalf of ICNU and Public Counsel

26 Even *if* Ms. Ramas and Mr. Falkenberg could be construed as agents, the agency would necessarily be limited in scope and not extend to their work in other states. Ms. Ramas was contracted by Public Counsel as an expert witness for the finite duration of the *2009 GRC*.[36]

33/ *Taylor v. Kohli*, 162 Ill.2d 91, 96, 642 N.E.2d 467, 469 (1994) (ruling as a matter of law that an expert witness is not *per se* an agent of the party calling him, and stating that "an expert witness is more accurately described as an independent contractor").

34/ *Kirk v. Raymark Indus., Inc.*, 61 F.3d 147, 164 (3rd Cir., 1995) (holding that a statement of an expert witness hired by a party cannot be used against that party as an admission by a party opponent). *See also Condus v. Howard Savings Bank*, 986 F.Supp. 914, 916-17 (D.N.J., 1997) (holding that an outside consultant hired to provide hired by a bank to provide an independent assessment was not an "agent independent contractor" of the bank).

35/ *Pfizer, Inc. v. Ranbaxy Lab., Ltd.*, 68 Fed. E. Evid. Serv. 361 (D.Del. Sept. 20, 2005); *Cross v. Cutter Biological*, 676 So.2d 131, 147-48 (La.Ct.App.4th Cir., 1996) (finding no evidence of an agency relationship where an expert witness was paid an hourly rate for his work, the alleged principals did not have the right to control the expert's conduct, and the expert lacked "the right or authority to represent" the alleged principals); *Sabel v. Mead Johnson & Co.*, 737 F.Supp. 135, 138-39 (D. Mass, 1990) (holding that outside experts/consultants were not agents of the party for whom they had performed research, noting the lack of authority granted to the consultants to speak on the party's behalf); and *Sutherlin v. White,* 71 Va. Cir. 184 (Va.Cir.Ct., June 29, 2006) ("[N]o party to litigation can exercise the level of control over an expert witness that an employer may exercise over an employee").

36/ *See* Testimony of Donna Ramas in Support of Settlement on Behalf of Public Counsel, Exh. No. DR-1T, Docket No. UE-090205 at 1:17-2:4. (Sept. 22, 2009) (explaining that her testimony was limited in scope to review of the *2009 GRC* filing and settlement stipulation).

Ms. Ramas' work on behalf of Public Counsel was strictly limited in scope to analyzing the revenue filing in that case, and her work ceased after she filed testimony in support of the proposed settlement in September 2009.[37] Likewise, Mr. Falkenberg also was retained by ICNU in Washington for the limited purpose of serving as a witness in the 2009 case, and not to act as an agent of knowledge for ICNU regarding PacifiCorp's dealings in other states.[38]

27 And assuming *arguendo* that Ms. Ramas and Mr. Falkenberg were agents of Public Counsel and ICNU at the time they were working in Utah, any knowledge they may have gained during their work in Utah for other clients could not be imputed to Public Counsel and ICNU because their work was outside the scope of any possible agency. Ms. Ramas' and Mr. Falkenberg's participation in the Utah case was on behalf of a completely separate party, the Utah Office of Consumer Services.[39] Since ICNU and Public Counsel were not parties to the Utah case, even today, they do not know whether any information was actually presented in Utah that has any bearing on the parties' claims in Washington.

c. PacifiCorp Has Not Shown that Mr. Falkenberg Learned of the Essential Elements of the Claims Through Participation in Oregon Proceedings

28 PacifiCorp argues that ICNU and Public Counsel's claims accrued at the time of Mr. Falkenberg's participation as an expert witness for ICNU in two Oregon proceedings—

37/ *See id.* PacifiCorp misconstrues the cases that it cites regarding agency law. Specifically, PacifiCorp cites to *Feature Realty, Inc. v. City of Spokane* for the proposition that knowledge can be imputed to a party from its former lawyer, seeming to suggest that knowledge gained by Ms. Ramas or Mr. Falkenberg after they had completed their service as expert witnesses could be imputed to Public Counsel or ICNU. *See* Motion to Dismiss ¶40. What PacifiCorp fails to explain is that, in *Feature Realty*, the knowledge at issue was obtained by the lawyer during and in the course of his service on behalf of the client. *See* 331 F.3d 1082, 1093 (9th Cir., 2003). Thus, *Feature Realty* does not stand for the proposition that knowledge obtained by a lawyer *after* his or her service for a client can be imputed to the former client.

38/ *See* Testimony of Robert M. Meek in Support of Settlement Stipulation on Behalf of ICNU, Exh. No. RMM-1T, Docket No. UE-090205 at 2:12 (Sept. 22, 2009) (describing Mr. Falkenberg's role in the *2009 GRC* as limited to "review[ing] power cost and resource prudency issues").

39/ Motion to Dismiss ¶¶23-24.

Docket Nos. UE 207 and UM 1465.[40] Assuming, *arguendo*, that Mr. Falkenberg was an "agent" of ICNU when he served as an expert witness, PacifiCorp has still failed to show that Mr. Falkenberg gained knowledge of the essential elements of the claims at that time. Moreover, PacifiCorp says nothing about how this may have caused Public Counsel's claims to accrue.

29 The documents that PacifiCorp references to support this assertion do not show that Mr. Falkenberg could have or should have gained knowledge of the essential elements of the claims.[41] For instance, the November Update in Docket No. UE 207 shows three "new" sales contracts with California utilities and their impacts on Oregon net power costs. The Update does *not* provide the unredacted California Contracts or show the impact of the sales on Washington. In addition, the November Update explicitly states that the "prices for RECs are irrelevant" and that they are redacted from the filing.[42] The piece of testimony from Mr. Falkenberg supporting an Oregon accounting petition in Docket UM 1465 is likewise insufficient to show that he could have or should have gained knowledge of the essential elements of the claims. In that testimony, Mr. Falkenberg does little more than reference one contract generally. This testimony includes nothing regarding the essential elements of ICNU and Public Counsel's claims.

5. The Commission Orders in *AT&T v. Qwest* Support a Finding that ICNU and Public Counsel's Claims Are *Not* Time-Barred

30 ICNU and Public Counsel cite to the Initial Order in *AT&T* (hereinafter *AT&T I*) when discussing the proper statute of limitations for refund claims.[43] As noted by PacifiCorp, two later orders—Orders 04 and 06—came to a different conclusion than *AT&T I* with regard to

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40/ Motion to Dismiss ¶¶25, 40.

41/ *See Oregon Pub. Utility Comm'n Net Power Cost Update for PacifiCorp's 2010 TAM*, OPUC Docket No. UE 207 (filed Nov. 9, 2009).

42/ *Id.* at Attachment B at 2-3.

43/ Joint Complaint at n. 5.

the facts in that case (hereinafter *AT&T II* and *AT&T III*).[44] PacifiCorp alleges that ICNU and Public Counsel's citation to *AT&T I* was improper and that *AT&T II* and *AT&T III* support a finding that ICNU and Public Counsel's claims accrued at various earlier dates. Both of these allegations are wrong. *AT&T I* is proper precedent for showing that the Commission applies the "discovery rule" when determining whether the statute of limitations on a claim has expired,[45] and the Commission's ultimate determinations in *AT&T II* and *AT&T III* actually support a finding that ICNU and Public Counsel's claims could not have accrued at the earlier dates alleged by PacifiCorp.

31 In *AT&T I,* Time Warner and AT&T brought a refund claim against Qwest that relied on Qwest's failure to file interconnection agreements in Washington. AT&T and Time Warner brought their claim in November 2005. Based on the facts in that case, this was years after AT&T and Time Warner had actual knowledge of the essential elements of their claims. The facts in that case included the following. First, AT&T and Time Warner were parties to a similar complaint case in Minnesota initiated in early 2002, in which both submitted comments and argued on the record regarding the unfiled agreements.[46] Second, numerous other jurisdictions had begun investigating Qwest for unfiled agreements in 2002. AT&T itself had initiated "a number" of those investigations, and was actively involved in all of them.[47] Third, AT&T had also brought a Federal Communications Commission claim regarding Qwest's interconnection agreements that year.[48] Finally, also in 2002, AT&T urged the Washington

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44/ *See* Motion to Dismiss ¶¶35-37.

45/ *AT&T Commc'n. et al. v. Qwest Corp.*, Docket No. UT-051682, Initial Order (Order No. 03) ¶18 (quoting *Janicki Logging*, 109 Wn.App. at 659-60).

46/ Docket No. UT-051682, Qwest Corp.'s Motion for Summary Determination and Dismissal ¶7 (dated Nov. 28, 2005).

47/ Docket No. UT-051682, Qwest Motion for Summary Determination or to Dismiss ¶9 (dated Oct. 22, 2007).

48/ *Id.* at ¶10.

Commission to pursue the matter of the unfiled agreements in an unrelated docket, and the Commission issued an order declining to do so in that docket.[49] At that time, the agreements had been filed in Washington, and it was "common knowledge that possible violations had occurred [and] that the violations could have affected complainants...."[50]

32 Based on the facts in that case, the Commission ultimately found that the accrual date for the AT&T and Time Warner claims *did not* hinge on the Minnesota case or what was presented in any other state, but, instead, on when AT&T and Time Warner knew that unfiled agreements existed in Washington and that both parties knew they had claims Washington that were subject to a statute of limitations.[51]

33 This case differs from *AT&T* in several critical aspects. Here, unlike *AT&T,* the California Contracts have not been filed in Washington, either publicly or confidentially. Parties have only been able to access the complete California Contracts subject to separately-negotiated highly confidential agreements in the *2010 GRC*. Furthermore, unlike AT&T and Time Warner, neither Public Counsel nor ICNU had brought a complaint in any other state regarding PacifiCorp's failure to disclose the California Contracts.[52] In addition, ICNU and Public Counsel have a vastly different relationship to PacifiCorp than AT&T and Time Warner had with Qwest. AT&T, Time Warner, and Qwest were all business entities that routinely engaged in negotiations essential to the ongoing operation of the CLECs in many states. On the other hand, ICNU and Public Counsel have limited interactions with PacifiCorp as adverse parties in regulatory proceedings in two states for ICNU and one state for Public Counsel. Moreover, this

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49/ *AT&T II* at ¶11.
50/ *Id.* at ¶20.
51/ *AT&T III* at ¶¶38-39.
52/ Indeed, Public Counsel has never been party to a PacifiCorp case in any other state, much less a case involving REC revenues.

Commission has never before addressed the issue of the California Contracts.[53] And, most importantly, unlike the complainants in *AT&T*, the facts here show that ICNU and Public Counsel did *not* have actual knowledge of the elements of the claims asserted prior to the statute of limitations period for the Joint Complaint. In sum, the final determinations in *AT&T II* and *AT&T III* cannot support a finding here that ICNU and Public Counsel's claims are time-barred.

a. The Statute of Limitations Applies Only to Requests for Refunds and therefore Does Not Apply to Requests for Any Other Remedies

34 The six-month statute of limitations applies solely to claims for refunds made under RCW 80.04.220.[54] The statute allows a longer period for claims brought under RCW 80.04.230, alleging collection of more than lawful rates, and does not specify any time limit for other types of requested relief as may be requested in a complaint as provided for in RCW 80.04.110.

35 Thus, any discussion of a six-month statute of limitations is solely applicable to ICNU and Public Counsel's request for financial relief, and does not apply to the other requests for relief. Public Counsel and ICNU's claims under RCW 80.04.230 have a two-year statute of limitations, which no party argues has tolled. Moreover, there is no statute of limitations on ICNU and Public Counsel's requests for a Commission investigation, establishment of regulatory mechanism to track REC revenues going forward, or for amendment of the *2009 GRC* Final Order.

53/ The issue of the California Contracts was first raised in the *2010 GRC,* in which the Commission has yet to issue a final order. *See 2010 GRC,* Exh. Nos. MDF-1CT at 14:10-15:7, MDF-4 and MDF-5.

54/ RCW 80.04.240 provides in part: All complaints concerning overcharges resulting from collecting unreasonable rates and charges or from collecting amounts in excess of lawful rates shall be filed with the commission within *six months in cases involving the collection of unreasonable rates* and two years in cases involving the collection of more than lawful rates from the time the cause of action accrues, and the suit to recover the overcharge shall be filed in the superior court within one year from the date of the order of the commission. (Emphasis added.)

B. The Alternative Request for Amendment of the Final Order in the *2009 GRC* Under RCW 80.04.210 is Appropriate

36 In the Joint Complaint, ICNU and Public Counsel request, as an alternative form of relief, that the Commission amend the *2009 GRC* final order.[55] This request is proper given the Commission's broad discretion to amend its prior orders when doing so is necessary to effectuate its purpose of "secur[ing] safe, adequate, and sufficient utility services for the public at just, fair, reasonable, and sufficient rates."[56] PacifiCorp makes three arguments as to why ICNU and Public Counsel's alternative request for amendment of the final order in the *2009 GRC* is improper: (1) the motion to amend, if brought as a complaint, constitutes an impermissible collateral attack on the final order in the *2009 GRC*; (2) the motion to amend results in impermissible retroactive ratemaking; and, (3) the motion to amend constitutes single-issue ratemaking.[57] For the reasons discussed below, none of these arguments actually bars amendment of the *2009 GRC* final order.

1. The Joint Complaint is Not a Collateral Attack on the *2009 GRC* Final Order

37 PacifiCorp makes a strained argument that the language of RCW 80.04.210 precludes a motion to amend a Commission order if brought in the form of a complaint.[58] RCW 80.04.210 is silent as to the appropriate method to request amendment to a Commission order and contains no language to suggest a limitation on pursuing a request to amend a Commission order in a complaint rather than a different form of pleading. The portion of the rule quoted and emphasized by PacifiCorp[59] establishes only that the public service company is entitled to an

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55/ *Id.* at ¶25.

56/ *U.S. W. Communications, Inc. v. WUTC*, 134 Wn.2d 74, 121, 949 P.2d 1337 (1997); *Washington State Attorney General's Office v. WUTC*, 128 Wn.App 818, 826, 116 P.3d 1064 (2005).

57/ Motion to Dismiss ¶¶45-49.

58/ *Id.* at ¶45.

59/ *Id.* ("Indeed the clear language of RCW 80.04.210 contemplates that proceedings to amend Commission orders are distinct from complaint proceedings. RCW 80.04.210 states that the Commission may amend an order only after providing '...notice to the public service company affected, and after opportunity to be

opportunity to be heard and creates no bar to ICNU and Public Counsel's request in this case, as PacifiCorp will have a full opportunity to be heard. Thus, PacifiCorp's interpretation inserts an artificial distinction into the rule. A reasonable interpretation of the language of RCW 80.04.210 includes complaint proceedings, particularly since the rule is silent on this issue.

38 Similarly, RCW 80.04.110(1) presents no limitation on the types of relief requested in a proceeding initiated by a complaint. In fact, RCW 80.04.110(1) explicitly provides that the reasonableness of rates may be challenged by complaint, and a grant of relief under RCW 80.04.110(1) would, in many circumstances, require amending Commission orders. If, as PacifiCorp claims, the Commission is precluded from providing relief for a complaint brought under RCW 80.04.110(1), the central purpose of the complaint statute would be thwarted.

39 Finally, PacifiCorp's claim that the issues raised in the Joint Complaint constitute a collateral attack on a Commission order suffers from a basic defect of reasoning. As described in the legal authority relied upon by PacifiCorp, a complaint may be viewed as a collateral attack on an order if the issues *could* have and should have been raised and litigated in the underlying rate case. ICNU and Public Counsel *could not possibly* have raised and litigated the issue of 2010 REC revenue in the *2009 GRC*, because PacifiCorp was withholding accurate and complete information about its REC revenues. Thus, granting PacifiCorp's Motion to Dismiss on the basis that the Joint Complaint is a collateral attack on a Commission order would only create an incentive for the Company to conceal information during its general rate cases with the knowledge that its wrongful actions would be insulated from further review.

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heard *as provided in the case of complaints…*' (emphasis added).")

40 Although the Commission rules present no bar to a request to amend a final order through a proceeding initiated by a complaint, if the Commission determines that a complaint is not the most appropriate method to request amendment of a prior order, the Commission may liberally construe pleadings "to effect justice among the parties."[60] In such a case, the Commission may restyle the complaint into a motion to amend the final order in the *2009 GRC*, or in some other form that it deems appropriate.[61] Such action would be consistent with the relief requested in the Joint Complaint.

2. The Relief Requested in the Joint Complaint Will Not Result in Retroactive Ratemaking

41 PacifiCorp argues that ICNU and Public Counsel's request for amendment of the *2009 GRC* Final Order to allow for recovery of 2010 REC revenues is prohibited by the rule against retroactive ratemaking.[62] ICNU and Public Counsel's request for amendment of the *2009 GRC* Final Order does not amount to retroactive ratemaking. In the alternative, if the Commission determines that this is not the case, it may still amend the final order under the well-established exceptions to the rule.

42 The rule against retroactive ratemaking prohibits the current collection of costs that were only properly recoverable fully in a past period or periods.[63] Thus, retroactive ratemaking encompasses the recovery of costs or revenues that were known and thus could have, and should have, been included in rates previously. In the 2008 Avista general rate case, the Commission allowed Avista to recover the costs of a settlement with the Coeur d'Alene Tribe for

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60/ WAC 480-07-395(4).

61/ *WUTC v. Northwest Natural Gas Co.*, Docket. No. UE-080546, Order No. 5 ¶¶13-16 (Mar. 19, 2010) (restyling petition for declaratory ruling as a motion to amend final order).

62/ Motion to Dismiss ¶46.

63/ Leonard S. Goodman, *The Process of Ratemaking*, Public Utility Reports, Inc., 1998, p. 165.

past damage.[64] In that case, ICNU and Public Counsel argued that recovery of these costs would amount to retroactive ratemaking since the damages were attributable to past periods.[65] The Commission allowed recovery, stating:

> Until Avista reached a settlement earlier this year, it had no obligation to the Tribe. This case presents Avista's *first opportunity* to recover the charges associated with that obligation.[66]

Applying this precedent here, ICNU and Public Counsel could not have addressed the excess 2010 REC revenues during the *2009 GRC*, because PacifiCorp concealed the evidence regarding these revenues. Thus, applying the Commission's reasoning in the Avista case, retroactive ratemaking is not present here.

43 If the Commission determines that amending the *2009 GRC* Final Order does technically constitute retroactive ratemaking, it may, nonetheless, still amend the Order under the well-established exceptions to the rule. The Commission has previously explained such exceptions:

> Although [the retroactive ratemaking concept is a] well established principle…in the context of economic regulation, [it is] not so rigid as sometimes viewed. There are equally well-established exceptions.[67]

Moreover, the Commission has declared that it should "review other relevant factors than the pejorative 'retroactive' label" when determining whether a proposed regulatory action is

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64/ *WUTC v. Avista Corp, d/b/a Avista Utilities,* Docket No. UE-080416/UG-0804167 (consolidated) Order 08 ¶78 (emphasis added).

65/ *Id.* at ¶72.

66/ *Id.* at ¶78.

67/ *In re the Petition of PacifiCorp d/b/a Pacific Power & Light Co. For an Accounting Order Authorizing Deferral of Excess Net Power Costs*, Docket No. UE-020417, Third Supp. Order ¶¶23-24 (allowing PacifiCorp to file a request to establish and maintain a deferred account for asserted extraordinary power costs for future recovery).

lawful.[68] While ICNU and Public Counsel do not believe retroactive ratemaking is implicated by the Complaint, if the Commission disagrees, the exceptions to the rule and the other relevant factors must be taken into consideration here.

44 One well-established exception to the rule against retroactive ratemaking exists for situations where certain costs or revenues could not reasonably be anticipated by the party seeking allegedly retroactive treatment. A central consideration in this exception is whether the party could have accepted the risk of non-recovery. This exception was noted by the Commission in Docket No. UE-010410, which PacifiCorp cites to support its argument here:

> In addition, the Commission has carefully reviewed the *substantive and policy issues raised by this filing.* When the Commission initially approved both the CIC and Time-of-Day rates, there was substantial discussion concerning the benefits and risks of the program, and how they might be divided between the Company and its ratepayers. In light of that discussion, it is not credible to claim, as PSE now does, that "no one could have anticipated" the drop in wholesale market prices from extraordinarily high levels to more normal levels (but still high by historical standards). While PSE may not have predicted the market drop, the possibility that it *could* drop was expressly discussed. *It was clear at that time that the Company accepted not only the benefits of the program but also the risk that the program would fail.* Had power prices remained high, under the program, the Company would have kept all benefits flowing from that program. Once prices fell, and the anticipated benefits dwindled, the Company requested that its general body of ratepayers bear all of the losses associated with the program. Significantly, those ratepayers were not put on notice that, under any circumstances, they would be saddled with those risks. It is not in the public interest for the Commission now, after

[68] *WUTC v. Puget Sound Power & Light Co.*, Docket No. U-81-41, Sixth Supp. Order at 18-19 (Dec. 19, 1988) (allowing the utility to maintain an energy cost adjustment clause despite arguments by Commission Staff that it involved retroactive ratemaking); *WUTC v. U.S. West Commc'n., Inc.,* Docket No. UT-970010, Second Supp. Order at 10-11 (Nov. 1997) (determining whether the recovery of past expenses was barred by the rule required an evidentiary hearing because the Commission had to consider the "policy and evidentiary reasons for exercising [its] judgment" to allow such recovery).

> the fact, to burden PSE's customers with risks the Company assumed at the outset.[69]

The Commission applied this exception in a previous case when it allowed a utility to recover unforeseen costs.[70]

45 This present case falls squarely into the exception for revenues that could not have been anticipated based on the Company's own representations. ICNU and Public Counsel had no reason to assume and no way of knowing during the *2009 GRC* that PacifiCorp would earn REC revenues far in excess of what the Company claimed. The result of the settlement was that PacifiCorp overcharged customers by the amount of REC revenues it knew, but did not disclose, it would receive in the 2010 rate effective period. ICNU, Public Counsel, and the ratepayers they represent in *no way* accepted this risk of overcharge during the *2009 GRC,* nor could they have, since PacifiCorp *concealed the relevant information* from the parties.

46 Moreover, there are sound policy reasons why the Commission should reject PacifiCorp's argument that returning 2010 REC revenues to customers would violate the rule against retroactive ratemaking. Accepting such an argument would incent companies to attempt to wrongly retain revenues by not disclosing information about those revenues until it is "too late."[71] This result would defeat the purpose of the rule, which is to protect the rights of

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69/ *In the Matter of the Application of Puget Sound Energy For Authorization Regarding the Deferral of the Net Impact of the Conservation Incentive Program*, Docket No. UE-010410, Order Denying Petition to Amend Accounting Order ¶9 (emphasis added). In that case, Commission Staff discussed PSE's assumption of risks in its Open Meeting Memo dated November 7, 2001 at 2.

70/ *WUTC v. Puget Sound Power & Light Co.*, Docket No. U-81-41, Sixth Supp. Order at 19 (noting that the Commission had previously "authorized the recovery of past expenses in the instances where doing so is consistent with the public interest and sound regulatory theory" including "recovery of extraordinary weather-related expenses." The Commission went on to state, "[t]he test for such treatment is not whether it constitutes retroactive ratemaking–it does not–but whether there are sound policy and evidentiary reasons for exercising the Commission's judgment to do so").

71/ Docket No. U-81-41 at 17-18, (stating in part, "[t]he evil in retroactive ratemaking as thus understood is that the consumer has no opportunity prior to receiving or consuming the service to learn what the rate is or to participate in a proceeding by which the rate is set. The Commission agrees that retroactive ratemaking, as thus understood, is extremely poor public policy.")

customers in light of the imbalance of knowledge between companies and customers.

3. The Relief Requested is a Permissible Exception to the General Rule Disfavoring Single-Issue Ratemaking

47 PacifiCorp claims that the relief requested in the Joint Complaint, a refund and the establishment of a balancing account, would constitute single-issue ratemaking.[72] Single-issue ratemaking is disfavored because it may distort the "matching principle," whereby costs and revenues are balanced at a single point in time to determine fair, just, reasonable, and sufficient rates.[73] The exceptions, however, are largely swallowing the rule, as utilities, including PacifiCorp, frequently file to recover costs as single issues.

48 The Washington precedent cited by PacifiCorp, as applied to the facts of this case, lend no support to its Motion to Dismiss. As PacifiCorp noted in its Motion to Dismiss, the Commission held in *AT&T Comm. v. Verizon* that a general rate adjustment in that complaint proceeding did not constitute single-issue ratemaking.[74] PacifiCorp attempts to distinguish that case from the allegations raised in the Joint Complaint, through reference to *McLeodUSA v. Qwest*.[75] In *McLeodUSA v. Qwest*, the Commission explained that the departure from the usual caution against single-issue ratemaking in *AT&T Comm. v. Verizon* was predicated on the consideration of a voluminous record, and because Verizon acknowledged that its rates were too high.[76]

49 Contrary to PacifiCorp's assertions, *AT&T Comm. v. Verizon* is analogous to the

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72/ Motion to Dismiss ¶48.

73/ *Petition of Avista Corp. d/b/a Avista Utils., for an Order Authorizing Implementation of a Natural Gas Decoupling Mechanism,* Docket No. UG-060618, Order No. 4 ¶19 (Feb. 1, 2007).

74/ Motion to Dismiss at n. 21 (*citing AT&T Comm. of the Pacific Northwest Inc. v. Verizon Northwest Inc.*, Docket No. UT-020406 Eleventh Supp. Order at 5 (Aug. 12, 2003)).

75/ *Id.* (*citing McLeodUSA Telecom. Services, Inc. v. Qwest Corp.*, Docket UT-063013, Order 04 (Feb. 16, 2007)).

76/ *Id.*

facts alleged in the Joint Complaint. PacifiCorp points out that the result in the *AT&T Comm. v. Verizon* case was achieved upon the consideration of voluminous evidence. Similarly, upon conducting discovery in this case, ICNU and Public Counsel intend to provide the Commission with a full record to support the allegations raised in the Joint Complaint, and thus, the Motion to Dismiss should not be granted because the record does not yet contain "voluminous evidence." Further, as in *AT&T Comm. v. Verizon*, as Verizon acknowledged that its rates were too high, PacifiCorp has acknowledged that it earned REC revenues in 2010 that were far in excess of the REC revenues accounted for in rates by the settlement of the *2009 GRC*.[77] Through this admission, PacifiCorp effectively acknowledges that the rates resulting from the settlement of the *2009 GRC* are excessive because they do not reflect the 2010 REC revenues PacifiCorp knew it would receive.

50 Although disfavored, the Commission routinely makes exceptions to the general rule against single-issue ratemaking, as in the case of the Power Cost Only Rate Case Mechanism ("PCORC").[78] Thus, an exception to the general caution against single-issue ratemaking is appropriate in certain circumstances. The Commission should consider PacifiCorp's wrongful concealment of material facts through discovery abuses to be such an unusual circumstance. Of particular relevance to the Joint Complaint, the Commission has found that the establishment of a regulatory liability account for RECs was appropriate in the Puget Sound Energy, Inc. ("PSE") REC case.[79] The Commission may, consistent with the policy determination articulated in the PSE REC case, establish an accounting mechanism to accurately

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77/ *2010 GRC*, Cross Examination Testimony of R. Bryce Dalley, Tr. 369-370 (Jan. 25, 2011).

78/ *WUTC v. Puget Sound Energy, Inc.* Docket Nos. UE-072300 and UG-072301, Order No. 13 ¶26 (Jan. 1, 2009).

79/ *PSE RECs Petition*, Docket. No. UE-070725, Final Order ¶¶41-47.

credit the customers with the actual REC revenues PacifiCorp wrongfully retained.[80]

C. PacifiCorp Violated Commission Rules for Failure to Support its Pro Forma Adjustment and Failure to Correct the Record

51 In the Joint Complaint, ICNU and Public Counsel allege that PacifiCorp is in violation of RCW 34.05.452(3) (testimony under oath), RCW 80.04.130(4) (burden of proof) and WAC 480-07-540 (burden of proof) with regard to the pro forma adjustment for RECs that was ultimately included in the settlement. PacifiCorp maintains that these allegations fail to state a claim because: (1) the California Contracts were "contingent;" (2) the claim is time-barred; and (3) the violations of law alleged constitute a "procedural deficiency." PacifiCorp is wrong on all accounts.

1. PacifiCorp's Failure to Include "Contingent" California Contracts in Pro Forma Adjustment to REC Price Was Unreasonable

52 PacifiCorp claims its failure to include the California Contracts in its pro forma adjustment, or to provide the contracts in discovery when requested, was justified because the contracts were "contingent," *i.e.*, they had not yet been approved by the California Public Utility Commission ("CPUC") and therefore were not "known."[81] These contracts were not contingent. PacifiCorp grossly overstates the "contingent" nature of these contracts by mischaracterizing REC contract approval data from the CPUC. Indeed, PacifiCorp provides no reason as to why it could have believed that the CPUC would not approve the California Contracts. Finally, PacifiCorp fails to explain why it did not provide the California Contracts in discovery with the explanation that the Company considered them "contingent." This, of course, is a classic question of fact. ICNU and Public Counsel should be given the opportunity to show how

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80/ *Id.*
81/ Motion to Dismiss ¶53.

PacifiCorp treated these contracts differently than other "contingent" costs.

53 PacifiCorp exaggerates the uncertainty of CPUC approval, claiming that more than "thirty contracts filed for approval around the same time of the California Contracts are currently pending consideration and approval by the CPUC."[82] Review of the spreadsheets which PacifiCorp presumably[83] relies upon to make this statement indicates that there were not in fact thirty contracts filed "around the same time" that are still pending CPUC approval. When viewing the data available prior to approval of the California Contracts, the CPUC spreadsheets show that, in fact, there were only four contracts filed "around the same time" as the California Contracts that have not yet been approved by the CPUC.[84] Moreover, not a single one of these four contracts is comparable to the California Contracts.[85] Thus, it appears from the information presented by PacifiCorp that there were in fact *no* REC contracts still pending CPUC approval

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82/ *Id.* at ¶14.

83/ PacifiCorp cites generally to the CPUC Renewables page and does not include a specific reference for the name and date of the spreadsheet it used. *Id.* at n. 4. Presumably, PacifiCorp is referring to the spreadsheet labeled "RPS_Project_Status_Table_2011_February," available under the link "Download a List of RPS Projects" at the site referenced by PacifiCorp: http://www.cpuc.ca.gov/PUC/energy/Renewables/index.htm.

84/ According to the spreadsheet on the CPUC website, there are currently fifty-three contracts pending approval by the CPUC, twenty-one of which were filed in January of 2011 alone. Thirty-two were filed prior to 2011. The remaining pending contracts are presumably the "more than thirty contracts filed for approval at the same time of the California Contracts" (although, this is an assumption, as the Company does not provide a direct citation to which are included). However, of these thirty-two contracts, *twenty-eight were filed after the CPUC approved the California Contracts.* In making representations about its assumptions regarding potential delay of CPUC approval, PacifiCorp cannot rely on contracts that were filed *after* approval of the California Contracts. *Id.*

85/ Of the four contracts, three have an online date after January 1, 2012, and the fourth contract related to tradable RECs, which were not allowed for RPS compliance in California until after the CPUC issued a decision and order on the matter, on January 14, 2011. "RPS_Project_Status_Table_2011_February, available under the link "Download a List of RPS Projects" at http://www.cpuc.ca.gov/PUC/energy/Renewables/index.htm; *Submission of Contracts For Procurement of Renewable Energy From SCE's 2008 Renewables Portfolio Standard Solicitation*, CPUC AL 2339-E (Apr. 6, 2009) (generation resource online date 2013); *Submission of Bilateral Agreement for Procurement of Renewable Energy* CPUC AL 2358-E (July 13, 2009) (delivery under contract beginning in 2012); *Submission of Contracts for Procurement of Renewable Energy from SCE's 2008 Renewables Portfolio Standard Solicitation*, CPUC AL 2374-E, (Aug. 21, 2009) (generation resource online date 2014); *Submission of Bilateral Agreement for Procurement of Renewable Energy*, CPUC Docket No. U-338-E, Ruling (Jan. 24, 2011) (tradable RECs); *Decision Resolving Petitions for Modification of Decision 10-03-021 Authorizing Use of Renewable Energy Credits for Compliance with the California Renewables Portfolio Standard and Lifting Stay and Moratorium Imposed by Decision 10-05-018*, CPUC Docket No. R.06-02-012 (Jan. 14, 2011).

that are comparable to and filed around the same time as the California Contracts.

54 PacifiCorp additionally maintains that "[i]n some instances, the CPUC has delayed approval of REC-related contracts for more than two years; in at least one case, the CPUC denied approval."[86] This statement is, again, completely misleading. At the time that PacifiCorp filed the California Contracts for approval by the CPUC, there were very few examples of delays or denials for REC contracts. The few examples of delays or denials of CPUC approval were limited to contracts involving: (1) failure to include standard terms and conditions required by CPUC rules; (2) new resource acquisitions that would not come online until well into the future; (3) resources that were not yet eligible for RPS compliance; or (4) unviable projects.[87] These concerns are not at all relevant to the California Contracts.

55 The two California Contracts at issue were approved within four months of being filed with the CPUC.[88] This timeframe is wholly consistent with the average time for CPUC approval of REC contracts at the time PacifiCorp filed the California Contracts.[89] Thus, PacifiCorp's claim that uncertainty of CPUC approval justifies its failure to provide revenue information from the California Contracts during the *2009 GRC* is unpersuasive. This appears to

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86/ Motion to Dismiss at ¶14.

87/ *See Re PG&E Request for Approval*, CPUC Resolution E-4170, PG&E AL 3183-E/SVN at 23 (May 15, 2008) (rejected contract for failure to include standard terms and conditions); *Re PG&E Request for Approval*, CPUC Resolution E-4168, AL 3181 at 9-10 (Oct. 16, 2008) (rejected contract because project not viable); *Re Southern California Edison Company Request for Approval*, CPUC Resolution E-4168, ALs 2143-E/E-A/E-B/SMK at 16 (July 10, 2008) (contract approval delayed because generation resources not online).

88/ Motion to Dismiss at ¶¶14, 22.

89/ To determine the average length of time of CPUC approval of REC contracts, ICNU and Public Counsel researched the filing date of every approved contract listed on the spreadsheet titled, "RPS_Project_Status_Table_2011_February," available under the link "Download a List of RPS Projects" at http://www.cpuc.ca.gov/PUC/energy/Renewables/index.htm. ICNU and Public Counsel then calculated the number of days between the filing and approval of each contract. For purposes of comparison, the California Contracts are similar to those listed under the "Projects Approved and Online" as the resources were operational at the time the contracts were signed. The contracts filed in this category between 2008 and the time PacifiCorp filed the California Contracts were, on average, approved within 117 days.

be nothing more than an after-the-fact justification for failure to provide accurate and complete discovery. Furthermore, the California Contracts were structured so that performance under the contracts would begin in October 2009. PacifiCorp cannot reasonably claim that it expected performance under the contracts to begin in October 2009, prior to the *2009 GRC* evidentiary hearing, while at the same time arguing that approval of the California Contracts was so uncertain that it would be unreasonable to include them in the forecast for 2010 REC revenues.

56 From the facts currently available, it appears that PacifiCorp determines whether to treat a contract pending regulatory approval as contingent or non-contingent for purposes of disclosure to parties and inclusion in rates not based on any objective criteria, but instead based on whether doing so will benefit the Company and its shareholders. In its Motion to Dismiss, PacifiCorp has offered *no* evidence that the California Contracts were new to the CPUC, had unusual terms, or other elements that make approval uncertain. In fact, all evidence shows that it was highly likely, if not certain, that the CPUC would approve the California Contracts before rates from the *2009 GRC* would go into effect. In sum, the evidence presented by PacifiCorp to demonstrate that the regulatory approval of the California Contracts was uncertain is not at all credible, and, on its face, raises questions of fact.

2. The Reparations Claim Relating to the Pro Forma Adjustment is Not Time-Barred

57 PacifiCorp claims that a request for reparations relating to the *2009 GRC* pro forma adjustment is necessarily time-barred, because PacifiCorp disclosed in discovery that 2008 and 2009 REC prices were higher than the price assumed in the pro forma adjustment.[90/] PacifiCorp's argument fails because the complained-of pro forma adjustment purports to reflect

[90/] Motion to Dismiss ¶52.

not 2008 or 2009 revenues, but anticipated *2010* revenues.

58 The allegations contained in the Joint Complaint reflect PacifiCorp's failure to disclose the 2010 REC revenue it knew it would receive at the time the of the *2009 GRC.* Thus, the disclosure of 2008 and 2009 data is largely irrelevant to the allegations in the Joint Complaint. PacifiCorp at no time disclosed that it possessed data regarding anticipated 2010 REC prices, and, as discussed above, ICNU and Public Counsel did not know the actual REC prices and their impact on Washington-allocated revenues until the California Contracts became available in Washington and the Company issued the 2010 1st Quarter REC Report.

59 In addition, the damages sought under the reparations statute reflect the difference between the amount of 2010 REC revenues PacifiCorp knew it would receive and the amount claimed by the pro forma adjustment. The data response cited by PacifiCorp reflects 2008 and 2009 data, which does not form the basis for the request for reparations under the Joint Complaint.

3. The Failure to Disclose a Material Fact is Not a "Procedural Deficiency"

60 PacifiCorp minimizes the importance of ICNU and Public Counsel's allegations by labeling them as a "procedural deficiency."[21] By raising the issue of whether PacifiCorp failed to carry its burden of proof and that the testimony supporting the pro forma adjustment was filed under oath, ICNU and Public Counsel are not alleging that PacifiCorp employees committed a procedural misstep. Rather, ICNU and Public Counsel are alleging that PacifiCorp employees have failed to disclose material facts in their sworn testimony, a serious allegation.

61 PacifiCorp's witnesses, Andrea Kelly and Cathie Allen, offered testimony in

[21] *Id.* at ¶51.

support of the settlement on September 22, 2009. Performance under the California Contracts was scheduled to begin on October 1, 2009, and two of the California Contracts had been approved, and thus, were "non-contingent," by October 15, 2009.[92] At the evidentiary hearing, on October 29, 2009, Ms. Kelly and Ms. Allen swore an oath and adopted their written testimony in support of the settlement.[93] The witnesses were afforded an opportunity to correct their testimony; Ms. Kelly made one revision to her testimony to correct a typographical error.[94] At no time did Ms. Kelly or Ms. Allen disclose that, since the time of submitting their testimony in support of the settlement, a fundamental change had occurred to the assumptions on which the settlement relied, because two of the California Contracts had been approved and performance had *actually begun* under those contracts. Ms. Kelly and Ms. Allen's failure to correct the record based on information known at the time of the evidentiary hearing is a failure to disclose a material fact to the Commission.

62 Additionally, ICNU and Public Counsel allege that PacifiCorp failed to carry its burden of proof to support its pro forma adjustment. PacifiCorp provided no support for its decision to rely on 2007 data when it had data at its disposal that would much more accurately reflect expected 2010 REC sales prices. While PacifiCorp again tries to downplay these violations of law as "procedural deficiencies," they in fact resulted in the Commission approving a settlement of the *2009 GRC* that did not reflect 2010 REC revenues, and thus, caused customers to be significantly overcharged. The dollars at stake hardly represent a mere

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92/ ICNU and Public Counsel maintain that the contracts were non-contingent as of the time of their execution. However, to highlight the unreasonableness of PacifiCorp's failure to disclose its known 2010 REC revenues, ICNU and Public Counsel note that, even by PacifiCorp's arbitrary standards, the contracts *were not* contingent at the time of the evidentiary hearing.

93/ *2009 GRC*, Evidentiary Hearing TR. at 104:5-13 (Oct. 29, 2009).

94/ *Id.* at 104:16-25, 105:1-5.

"procedural deficiency."

D. PacifiCorp's Justifications for its Failure to Provide Complete and Accurate Responses in Discovery and its Failure to Update its Responses Are Based on an Unreasonably Narrow Interpretation of the Data Requests

63 PacifiCorp argues that ICNU and Public Counsel's allegations based on discovery violations fail because "the information that Complainants now complain was not provided was also not requested."[95] This is simply not true, and again a question of fact for the Commission to decide. PacifiCorp makes an overly narrow and unreasonable interpretation of ICNU's data requests in an attempt to hide its then-known amount of 2010 REC revenues pursuant to executed contracts. The Commission has previously articulated the importance of full compliance with discovery rules: "[D]iscovery rules are not simply rules to be followed. They are what enable all parties and the Commission to proceed with a fact-finding hearing in an orderly and well-prepared manner."[96]

64 ICNU's data request in the *2009 GRC* stated: "Please update this response as PacifiCorp executes additional sales throughout this proceeding."[97] In its response, PacifiCorp included REC sales through the end of December 2009. The data request sought information about all executed sales, including updates executed throughout the proceeding. By the inclusion of revenue forecasts through the end of 2009, PacifiCorp's response to the request indicates that PacifiCorp had the same understanding of the data request.

65 PacifiCorp claims that it was obligated through this data request to provide only information about revenues that it had actually received and justifies its failure to include the California Contracts, because at the time of filing the settlement, the California Contracts had not

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95/ Motion to Dismiss ¶59.
96/ *WUTC v. Olympic Pipe Line Company*, Docket No. TO-011472 ¶30 (July 23, 2002).
97/ Joint Complaint, Exhibit C at 7 (*2009 GRC*, ICNU Data Request 2.1 ("ICNU 2.1")).

been approved by the CPUC, and PacifiCorp had not received revenue under the contracts. This explanation is simply not credible and in no manner reflects upon the straightforward questions posed in discovery. With regard to revenue received under the contracts, presumably, PacifiCorp had also not yet received actual revenue from the contracts that were included in response to ICNU 2.1, between the time of updating the response (July 2, 2009) and the time through which contract information was provided (December 2009). Thus, the information provided for the period between July and December 2009 was an estimate of revenue it would receive in that time period. If PacifiCorp had in fact interpreted the data request to only seek "actual revenue" received by the Company, its inclusion of revenue estimates was misleading and supports the reasonableness of ICNU's belief that it was receiving information about *all* executed contracts.

66 PacifiCorp justifies the inconsistency of its inclusion of the July through December 2009 revenue estimates and the exclusion of the California Contracts as follows: "PacifiCorp included forecast REC revenues for 2009 for non-contingent contracts because that information was in the Company's REC spreadsheet."[98/] However, PacifiCorp's response to ICNU 2.1 contained no explanation that it was including revenue estimates for executed and allegedly "non-contingent" contracts only, or that information from executed and "contingent" contracts was being excluded. The inclusion of revenue forecasts of only "non-contingent" contracts without any explanation as to their inclusion and the exclusion of "contingent" contracts is unreasonable and misleading. Moreover, the instructions accompanying ICNU's data requests clearly ask that:

> If, in answering any of these Data Requests, you feel that any Data Request or definition or instruction applicable thereto is ambiguous, set forth the language you feel is ambiguous and the

98/ Motion to Dismiss ¶56.

interpretation you are using in responding to the Data Request.[99]

67 Because PacifiCorp failed to comply with the instructions accompanying ICNU's data request and failed to identify what was being included and what was being excluded in the data response, ICNU had no way of knowing that it was not getting fully responsive information. If PacifiCorp was being straightforward and compliant with the data request, it would have included *all* contracts and explained why it believed certain contracts should be excluded. Under this approach, the information would be known, and the Commission could have resolved the matter if the parties were unable to agree. Obviously, this did not occur because presumably PacifiCorp believed it could provide selective information in response to discovery. At best, the reasonableness of PacifiCorp's interpretation of the data request discovery questions is a disputed issue of fact that merits additional investigation.

68 Further, the allegations in the Joint Complaint are not limited to PacifiCorp's failure to include the California Contracts. There may be other contracts that PacifiCorp has failed to include in its discovery responses, that neither ICNU nor Public Counsel have yet discovered. Accordingly, ICNU and Public Counsel should be allowed to investigate whether PacifiCorp failed to fully respond to data requests and failed to supplement its data responses when new information became available, and whether additional discovery abuses occurred.

V. CONCLUSION

69 The Motion to Dismiss is yet another attempt by PacifiCorp to evade the consequences of concealing information from parties to the *2009 GRC* and to avoid crediting ratepayers with the amounts they were overcharged in rates. PacifiCorp has failed to carry its burden to demonstrate that the Joint Complaint should be dismissed as a matter of law. ICNU

[99] Joint Complaint, Exhibit C at 4 (*2009 GRC*, ICNU Data Request Instructions).

and Public Counsel should be allowed the opportunity to pursue the allegations raised in the Joint Complaint and to develop a full record. For the foregoing reasons, ICNU and Public Counsel respectfully request that the Commission deny PacifiCorp's Motion to Dismiss or Motion for Summary Disposition.

Respectfully submitted,

DATED this 28th day of February, 2011.

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Of Attorneys for Industrial
Customers of Northwest Utilities

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE AND THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Joint Complainants, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT CORP. Respondents.	Docket No. UE-110070 AFFIDAVIT OF MELINDA J. DAVISON

STATE OF OREGON)
) ss.
County of MULTNOMAH)

I, Melinda J. Davison, being first duly sworn, do say:

1. My name is Melinda Davison. I am over the age of 18, a citizen of the United States, and competent to be a witness.

2. I am employed by the law firm of Davison Van Cleve as an attorney representing the Industrial Customers of Northwest Utilities ("ICNU") including before the Washington Utilities and Transportation Commission (the "Commission"). In this capacity, I participated in the 2009 and 2010 general rate cases of Pacific Power and Light, d/b/a PacifiCorp ("*2009 GRC*" and "*2010 GRC*"), and in the present case.

3. On or about January 6, 2011, I submitted an affidavit in this proceeding regarding certain discovery conducted by ICNU in the *2009 GRC* regarding renewable energy credit ("REC") sales.

4. During the *2009 GRC*, I participated in discussions with PacifiCorp regarding PacifiCorp's 2010 REC sales. Through discovery requests and other discussions, ICNU communicated to PacifiCorp that ICNU sought to obtain full and complete information about PacifiCorp's $657,755 in Washington-allocated REC sales for the 2010 rate-effective period, including, but not limited to, all expected 2010 REC revenues.

5. PacifiCorp at no time during the *2009 GRC* indicated that it had knowledge of expected or contingent 2010 REC revenues that it had not disclosed to other parties.

6. Pursuant to the Settlement of the *2009 GRC*, PacifiCorp was required to issue quarterly reports regarding REC revenues.

7. On or about July 8, 2010, ICNU was provided with complete copies of certain REC sales contracts that PacifiCorp entered in 2009 with certain California utilities for the sale of RECs in 2009 and 2010. This information was provided in the context of the *2010 GRC*.

8. On behalf of ICNU, I received the REC Report including data for the 1st Quarter of 2010 on or about July 28, 2010. This was the first time that I learned that the amount of 2010 REC revenue on a Washington basis that PacifiCorp was receiving for 2010 was much greater than represented in the 2009 GRC.

9. ICNU retained expert witness Randall Falkenberg to review power costs and interstate cost allocation issues in the *2009 GRC*. Mr. Falkenberg's employment in that instance was limited to the *2009 GRC*. ICNU did not directly control the manner of Mr. Falkenberg's analysis, testimony, and participation. Mr. Falkenberg's employment related to the *2009 GRC* terminated at the completion of the proceeding.

10. ICNU has retained Mr. Falkenberg in regulatory proceedings in Oregon in the past. Mr. Falkenberg is not currently retained by ICNU for any Oregon proceedings.

11. ICNU has never retained Mr. Falkenberg for any proceedings in Utah.

12. At all times, ICNU has retained Mr. Falkenberg on a case-by-case basis with a limited budget and scope of engagement for that specific case.

13. ICNU has never retained Mr. Falkenberg on a general basis or as an agent.

14. ICNU does not control Mr. Falkenberg's analysis, testimony or participation in any other jurisdiction.

15. On or about December 9, 2010, individuals from my firm obtained PacifiCorp's permission to file the Joint Complaint with material PacifiCorp designated as Highly Confidential.

16. On or about December 9, 2010, ICNU and Public Counsel filed the Joint Complaint containing material PacifiCorp designated as Highly Confidential. ICNU and Public Counsel filed the Joint Complaint on a Highly Confidential basis.

17. On or about December 16, 2010, PacifiCorp informed ICNU that it was withdrawing its permission to include the material designated as Highly Confidential in the Joint Complaint.

18. On or about January 6, 2011, ICNU and Public Counsel re-filed the Joint Complaint without reference to the material PacifiCorp had designated as Highly Confidential.

Melinda J. Davison

SUBSCRIBED AND SWORN to before me this 28th day of February, 2011.

OFFICIAL SEAL
KELLIE L CHAUNCEY-LANCE
NOTARY PUBLIC-OREGON
COMMISSION NO. 447447
MY COMMISSION EXPIRES MARCH 14, 2014

Notary Public for Oregon
My Commission Expires: March 14, 2014

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

REPLY BRIEF OF PUBLIC COUNSEL

FEBRUARY 18, 2011

CONFIDENTIAL VERSION
Confidential information is presented in boldface with "[Begin Confidential] / [End Confidential]" designation

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TABLE OF AUTHORITIES

UTC Cases

I. INTRODUCTION

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

II. RESIDENTIAL REVENUE NORMALIZATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. COMPENSATION

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

A. 2009 Wage Increase Adjustment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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[21] Post-Hearing Brief of Public Counsel, ¶ 22-23; Post-Hearing Brief on Behalf of ICNU, ¶ 108. PacifiCorp confirmed this fact at hearing. *See* Wilson, TR. 389:18-20.
[22] PacifiCorp's Initial Post-Hearing Brief ¶ 125 (*citing WUTC v. Avista Corp., d/b/a Avista Utilities*, Docket No. UE-090134, Final Order (Order 10), ¶ 111 (hereinafter *Avista 2009 GRC Order*)).
[23] The Commission's decision in that case was that Public Counsel had not provided a "compelling reason" for the adjustment. *See Avista 2009 GRC Order* at ¶ 111. A review of the testimony and brief in that case shows that, in fact, Mr. Hugh Larkin offered almost no reason for his adjustment, instead simply stating that what he had done in his annualizing adjustment. *See* Exh. No. HL-1T, pp. 12:15-13:16 (Larkin Responsive); Brief of Public Counsel, ¶ 613 (Nov. 10, 2009).
[24] Exh. No. GRM-1CT, pp. 31-32 (Meyer Responsive), Public Counsel Brief, ¶¶ 22-23.
[25] *WUTC v. Avista,* Docket Nos. UE-991606 & UG-991607 (consolidated), Final Order, ¶ 253 (disallowing a portion of CEO compensation, stating that the Company's Board of Directors is "free to pay whatever compensation it believes is necessary....[b]ut ratepayers should only pay a reasonable CEO salary...").

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

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

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

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[26] PacifiCorp's Initial Post-Hearing Brief, ¶¶ 126-127.
[27] Initial Brief on Behalf of Commission Staff, ¶ 48. Staff unnecessarily complicates this issue through a discussion of offsetting factors and offsets to offsets. In fact, the issue is clear—PacifiCorp has simply not met its burden of supporting its proposed pro forma adjustment.
[28] *WUTC v. Puget Sound Energy, Inc.*, Docket Nos. UE-090704 & UG-090705 (consolidated), Final Order (Order 11), ¶ 26 (stating, "the actual amount of the change must be measurable. This means that the amount typically cannot be an estimate, a projection, the product of a budget forecast, or some similar exercise of judgment – even informed judgment, concerning figure revenue, expense, or rate base") (hereinafter *PSE 2009 GRC*).
[29] Staff acknowledges that PacifiCorp's actual workforce levels have been steadily declining over the last two years, stating that the reductions "appear to be due to a hiring lag, not a permanent work force reduction," and that "the positions are available and expected to be filled." Initial Brief on Behalf of Commission Staff, ¶ 53.
[30] *See e.g., PSE 2009 GRC*, ¶ 59 (rejecting the Company's pro forma adjustment for property taxes that are calculated based in-part on Company projections).

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

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

TABLE 1: MANAGEMENT FEE COMPONENTS[32]

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. RENEWABLE ENERGY CREDIT (REC) SALES REVENUE

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

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

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

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

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

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

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

V. RATE SPREAD AND RATE DESIGN

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

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

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

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

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

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

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

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

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

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

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

VI. CONCLUSION

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

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

ROBERT M. McKENNA
Attorney General

SARAH A. SHIFLEY
Assistant Attorney General
Public Counsel

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

UE-100749/PacifiCorp
August 25, 2011
Public Counsel Data Request 155 – 1st Supplemental

Public Counsel Data Request 155

Please provide complete copies of *all* contracts for the sale of RECs entered into by PacifiCorp from January 1, 2008 to date, regardless of when the actual delivery of RECs was or is to take place, where the RECs at issue were generated or will be generated, or to what jurisdiction the revenue is/would be assigned. If not specified in an individual contract, provide in the narrative response to this data request: (1) the date the contract was entered into, (2) price per-REC, (3) delivery date(s), and, (4) and all other terms. NOTE: This is a continuing request *to be supplemented at any time* before the conclusion of this proceeding if and when an existing contract is amended *or* a new contract is entered into.

1st Supplemental Response to Public Counsel Data Request 155

In its original response, the Company stated that the unredacted REC sales contracts referenced in its response are considered highly confidential. In recognition of dates of the referenced contracts, the Company has determined that the contracts, while still commercially sensitive, may be designated confidential. Accordingly, unredacted versions of the contracts from the Company's original response are provided as Confidential Attachments PC 155-1 through 155-3 1st Supplemental.

Confidential information is provided subject to the terms and conditions of the protective order in this proceeding.

PREPARER: Paul Johnson

SPONSOR: To Be Determined

UE-100749/PacifiCorp
August 25, 2011
Public Counsel Data Request 184 – 1st Supplemental

Public Counsel Data Request 184

Please provide all REC sales contracts (including any associated shaping/delivery contracts), whether final or contingent, that PacifiCorp entered into with any party for delivery of RECs during or after CY 2009 from any resource regardless of location/control area. If the following information is not clear from each contract, please provide it in a separate document:

a) The date that the contract was signed/entered;
b) The volume of RECs to be sold;
c) The resource from which the RECs are to be generated;
d) The control area of the resource from which the RECs are to be generated;
e) The delivery date(s); and
f) The per-REC price(s).

1st Supplemental Response to Public Counsel Data Request 184

Without waiving the Company's objection to Public Counsel Data Request 184, the Company supplements its response as follows.

In its original response, the Company stated that the unredacted REC sales contracts referenced in its response are considered highly confidential. In recognition of dates of the referenced contracts, the Company has determined that the contracts, while still commercially sensitive, may be designated confidential. Accordingly, an unredacted version of the contract provided as Confidential Attachment PC 184 is provided as Confidential Attachment PC 184 1st Supplemental.

Confidential information is provided subject to the terms and conditions of the protective order in this proceeding.

PREPARER: Kristie Sharp

SPONSOR: To Be Determined

UE-100749/PacifiCorp
September 15, 2011
Public Counsel Data Request 195 – 1st Revised

Public Counsel Data Request 195

Phase II Direct Testimony of Stacey J. Kusters, Exhibit No. SJK-1CT, pp. 2-3.

(a) Please provide the terms of any liquidated damages clauses in any forward-looking contracts that PacifiCorp is currently entered into (regardless of whether the contract(s) is contingent on regulatory approval). Please identify to which contract relates, and if/when the contract has been provided through discovery to Public Counsel.

(b) Has PacifiCorp paid liquidated damages under a forward-looking REC sales contract to-date? If so, please provide the following information about each incident that resulted in a liquidated damages payment by PacifiCorp:

1. Buyer
2. Date(s) of the non-delivery
3. Actual MWhs not delivered
4. Amount of damages paid
5. Date of damage payment

1st Revised Response to Public Counsel Data Request 195

(a) All of PacifiCorp's forward contracts have provisions related to liquidated damages contained in the transaction confirmation or as incorporated under a master agreement. Article 4 of the EEI Master Purchase and Sale Agreement (EEI Master Agreement) contains provisions related to liquidated damages and is generally consistent across all of PacifiCorp's EEI Master Agreements, please refer to Attachment PC 195a 1st Revised for a copy. Each EEI Master Agreement is negotiated with the counterparty so variations in the underlying terms and conditions may exist, but provisions related to liquidated damages exist in all such forward contracts. Section 21 of the WSPP Agreement contains provisions related to liquidated damages, please refer to this url for all versions of the WSPP Agreement that may be applicable to PacifiCorp's forward contracts: (http://www.wspp.org/documents_results.php). In addition to these standard master agreements, the Pacific Gas and Electric Company contract dated September 15, 2009 (Appendix I) has additional provisions relating to liquidated damages (see specifically Confidential Attachment PC 155-2). Please also refer to Confidential Attachments PC 155-1, 155-2 and 155-3 for the remaining contracts with provisions relating to liquidated damages.

(b) No.

PREPARER: Paul Johnson

SPONSOR: Stacey Kusters