BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PACIFICORP d/b/a PACIFIC POWER & LIGHT COMPANY, Respondent.	)	Docket No. UE-100749

PHASE II REPLY BRIEF

ON BEHALF OF

THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

November 18, 2011

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I. INTRODUCTION

1 The Industrial Customers of Northwest Utilities ("ICNU") submits this posthearing reply brief responding to the legal and factual arguments raised by PacifiCorp (or the "Company") and Staff. ICNU continues to support all of the positions identified in its opening brief, and ICNU is only responding to those new arguments not fully addressed in previous briefing. The Washington Utilities and Transportation Commission ("WUTC" or the "Commission") should reject PacifiCorp's arguments regarding why the Company alone should benefit from the revenues associated with renewable energy credits ("RECs") that were obtained prior to April 2011, and that Washington ratepayers should receive no benefits associated with RECs that the Company holds for compliance with other states' renewable portfolio standards ("RPSs"). PacifiCorp's opening brief is simply yet another attempt by the Company to obfuscate the issues in this proceeding in order to keep the full value of REC revenues to which ratepayers are entitled. Washington ratepayers have paid 100% of the costs (including a generous return on investment) of their allocated share of the renewable resources that produced the RECs, and Washington ratepayers should receive 100% of the value of those RECs.

II. ARGUMENT

A. The Commission Is Not Barred from Establishing a REC Tracking Account by the Rule Against Retroactive Ratemaking, the Filed Rate Doctrine, the Finality of Commission Orders, or any Other Legal or Policy Grounds

2 PacifiCorp has raised a wide variety of legal and policy arguments regarding why the Commission should not return to ratepayers the full value of REC revenues starting on

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

January 1, 2009. PacifiCorp identified the rule against retroactive ratemaking, the filed rate doctrine, the final orders in the 2008 and 2009 general rate cases, the rule against single issue ratemaking, the requirements for deferred accounting, and the principles of equity as all barring the Commission from returning any REC revenues to ratepayers before April 2011.[1/]

3 All of these arguments are merely different aspects of PacifiCorp's central argument: that the Commission is powerless to account for extraordinary rate period costs. This is thoroughly rebutted in the opening briefs of ICNU, Staff and Public Counsel. The Commission has broad discretion and may make adjustments related to extraordinary revenues or benefits that occur during the rate period, especially when information about those RECs were withheld from the Commission and the parties. In addition, PacifiCorp is simply wrong when it asserts that "no exception to the rule against retroactive ratemaking applies" in this case.[2/] There is a well-established and limited exception to the rule against retroactive ratemaking, the filed rate doctrine and re-opening prior rate proceedings that applies in this case because PacifiCorp withheld information and mislead the parties regarding significant revenues that should be returned to customers.

1. The Commission Should Reject PacifiCorp's Attempts to Shift Responsibility for Correcting the Company's Misleading or Inaccurate Information to Staff and Intervenors

4 PacifiCorp repeatedly argues that the Company should be able to retain all REC revenues, because Staff and intervenors failed to file a REC deferred account.[3/] PacifiCorp never

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[1/] PacifiCorp Opening Brief at ¶¶ 44-87.
[2/] Id. at ¶ 62.
[3/] Id. at ¶¶ 26, 62-68, 74, 76, 87.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

mentions why the Company itself did not immediately correct the record from two previous general rate cases and inform the Commission and the parties that its REC revenue forecasts were inaccurate nor why the Company itself did not file a deferred account, as did Puget Sound Energy ("PSE") in similar circumstances.[4/] Instead, PacifiCorp cites the PSE case to show that retroactive ratemaking, the filed rate doctrine or other legal issues were not concerns because PSE filed for deferred accounting.[5/] Essentially, PacifiCorp is attempting to play an elaborate game of regulatory "gotcha," in which the Company fails to account for known amounts of extraordinary revenues in rate proceedings, refuses to correct its misleading information, and then blames other parties for failing to take action regarding information they were unaware of. The Commission should reject this type of gamesmanship as the point of regulation is to ensure that rates at all times are fair, just and reasonable.

5 PacifiCorp's brief raises a new argument for the first time, claiming that ICNU was aware that PacifiCorp's REC revenues significantly exceeded rate case forecasts as early as January 2010 and that ICNU should have filed a deferred account at that time.[6/] PacifiCorp states that it is "disturbing" that no party informed PacifiCorp that ICNU was aware PacifiCorp's actual REC revenues were significantly higher than forecast in January 2010, instead of the July 2010 filing, when the parties were first provided copies of the actual REC contracts.[7/] This

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[4/] 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 (May 20, 2010) (PSE filed a deferred account for RECs).

[5/] PacifiCorp Brief at ¶ 26.

[6/] Id. at ¶¶ 21-22, 28.

[7/] Id. at ¶ 28.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

allegation is simply not true. PacifiCorp's arguments are based on deliberate half-truths and misrepresentations of the facts, which have characterized the Company's overall approach to REC issues over the past few years in this and other jurisdictions.

6 PacifiCorp specifically argues that ICNU and other parties should have been aware that PacifiCorp's Washington allocated REC revenues significantly exceeded rate case forecasts, because Mr. Schoenbeck was aware that PacifiCorp entered into a REC contract with Southern California Edison ("SCE") as early as January 2010. In support of its claims, PacifiCorp cites Mr. Schoenbeck's January 2010 testimony from the PSE REC case (WUTC Docket No. UE 070725), which references the PacifiCorp/SCE contract and includes the public advice letter filing contained a general description of the contract, but no price information.[8/] PacifiCorp fails to inform the Commission that Mr. Schoenbeck merely attached a summary of this contract to his PSE testimony, which specifically did not include the key confidential REC prices.[9/] Mr. Schoenbeck was unaware of the value of the RECs in the PacifiCorp/SCE contract until he was provided a copy to review in this proceeding in late August 2011. Thus, while Mr. Schoenbeck was aware that PacifiCorp and SCE entered into a REC contract, neither Mr. Schoenbeck nor ICNU knew what the actual REC prices were until the contracts were provided by PacifiCorp. Thus, ICNU did not know the value of this contract in January 2010.

7 Even if Mr. Schoenbeck had been aware of the REC prices in the PacifiCorp/SCE contract, it not would have been reasonable for Mr. Schoenbeck to use that confidential REC

[8/] Id. at ¶¶ 21-22, 28.
[9/] Schoenbeck, DWS-7 at 14-22.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

information from a separate case with a different utility in this case. While ICNU has retained Mr. Schoenbeck to review PacifiCorp's REC revenue issues in Phase II of this proceeding, Mr. Schoenbeck had not previously reviewed PacifiCorp REC issues, as ICNU used a different consultant (Randall Falkenberg) to review REC issues in Phase I of this proceeding and past PacifiCorp Washington proceedings. The fact that Mr. Schoenbeck reviewed REC issues for ICNU in an entirely different PSE proceeding does not mean that Mr. Schoenbeck should have been required to inform ICNU about confidential material to file a REC deferred account on an issue in a different proceeding, particularly one in which he was not a consultant. Mr. Falkenberg was ICNU's consultant on PacifiCorp matters at that time.

8 There are numerous other flaws in PacifiCorp's theory. PacifiCorp does not even attempt to argue that any of the parties should have been aware of its extraordinary 2009 REC revenues. In addition, PacifiCorp's position suggests that parties should be able to assemble piece meal bits of confidential information about individual contracts from different proceedings to reach the conclusion that PacifiCorp provided completely inaccurate information in its rate case. For example, PacifiCorp claims ICNU should have filed a deferred account based on the fact that PacifiCorp entered into a single REC contract with SCE at an unknown price. Even if the REC prices were known, this contract does not constitute a majority of the REC revenues at issue in this proceeding, and it would not have allowed ICNU to know the full extent that PacifiCorp's REC revenues exceeded PacifiCorp's forecasts.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

9 PacifiCorp's false claims about when parties should have been aware of its extraordinary REC revenues are simply an attempt to distract the Commission from PacifiCorp's practice of hiding its actual REC revenues to the detriment of ratepayers. There is no dispute that PacifiCorp inaccurately forecast its REC revenues, the Company knew its forecasts were inaccurate, and PacifiCorp was the only party that knew the full extent of what its actual REC revenues were until mid-2010. PacifiCorp, and only PacifiCorp, could and should have filed for a REC revenue deferred account that would applied to its extraordinary 2009 and 2010 REC revenues.

2. Principles of Equity Support Returning 100% of REC Revenues to Ratepayers

10 PacifiCorp argues that the Commission should consider principles of equity when determining whether to return REC revenues to ratepayers.[10/] PacifiCorp requests that the Commission consider the Company's claim that it earned under its authorized return on equity in 2009 and 2010.[11/] PacifiCorp's earnings claims are irrelevant to the issues in this proceeding, and the Commission should be guided by the equitable principle that ratepayers should receive their full share of all RECs generated by resources that are included in rates.

11 PacifiCorp's rates in 2009 and 2010 were set through all-party settlements that PacifiCorp agreed provided the Company with "sufficient" funds, based on the assumption that

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[10/] PacifiCorp Brief at ¶ 48.
[11/] Id. at ¶¶ 48-52.

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333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

the Company would earn close to $600,000 in REC revenues each year.[12/] PacifiCorp's claim that rates to which it agreed are now insufficient unless PacifiCorp can keep these extraordinary REC revenues is false. In addition, PacifiCorp's concerns about past earnings are not applicable, because the REC tracking account will not apply to past periods, but will credit customers bills in 2011, 2012, and in the future. PacifiCorp's current rates and their impact on earnings are being considered in the Company's now pending general rate case, which is a more appropriate forum for considering issues regarding the Company's alleged current and future earnings.

12 PacifiCorp's earnings complaints are also part of its overall argument that returning RECs to ratepayers significantly increases the regulatory risks the Company is facing in Washington.[13/] PacifiCorp has taken the approach of filing near-annual rate cases in Washington, which increase the regulatory burden and risk upon the Commission, PacifiCorp, and its customers. PacifiCorp's decision to file general rate increases in quick succession not only burdens customers but also increases the likelihood that the Commission will identify extraordinary revenues and return them to ratepayers, as well as discover any misleading and inaccurate information filed by the Company. PacifiCorp is responsible for this increased regulatory uncertainty.

[12/] WUTC v. PacifiCorp, Docket No. UE-080220, Order No. 05 at Settlement Stipulation ¶ 28 (Oct. 8, 2008); WUTC v. PacifiCorp, Docket No. UE-090205, Order No. 09 at Settlement Stipulation ¶ 29 (Dec. 16, 2009); Dalley, Exh. No. RDB-28CT at 15-16.

[13/] PacifiCorp Brief at ¶¶ 48-52, 75.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

3. The Commission Should Not Offset Customer Credits for REC Revenues with Allegedly Poor Hydro Conditions

13 Almost as an afterthought, PacifiCorp raises another new argument, requesting that the Commission reduce any REC revenues with allegedly lower than expected hydro conditions.[14/] PacifiCorp cannot expand the limited scope of Phase II of this proceeding to address entirely new issues with no record to support this new allegation.

14 PacifiCorp completely misconstrues the scope of Phase II of this proceeding, which is to establish a regulatory tracking account and rate credit related to PacifiCorp's REC revenues.[15/] The Commission's direction does not include resetting all the various costs and revenues that have departed from the estimates included in the 2008 and 2009 rate cases, but to establish a tracking account for one extraordinary type of revenues that was not fully resolved in Phase I. The issue of how to address REC revenues was addressed by all the parties in testimony and briefing in Phase I, but the Commission concluded that it needed additional factual information and legal briefing to resolve the disputed issues.[16/] In contrast, PacifiCorp's hydro offset proposal was not raised in Phase I and not raised in Phase II until the time of filing briefs. Regardless of its merits (which are completely lacking), PacifiCorp should not be permitted to raise such a significant proposal this late in a proceeding that effectively prevents parties from reviewing, conducting discovery on, and responding to the Company's request. Thus, there is simply no record for the Commission to accurately decide this new allegation.

[14/] Id. at ¶¶ 86-87.
[15/] WUTC v. PacifiCorp, Docket No. UE-100749, Order No. 06 ¶¶ 204-08 (Mar. 25, 2011).
[16/] Id. at ¶ 201.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

B. Washington Ratepayers Should Receive 100% of the Value of RECs Held for Other State RPS Compliance

15 PacifiCorp and Staff argue that Washington ratepayers should not receive credits for all RECs that are banked to comply with other state standards because the Company did not actually sell 100% of RECs in 2009 and 2010.[17/] For revenue imputation purposes, the Commission should assume that PacifiCorp would sell 100% of its REC revenues so that Washington ratepayers obtain the full benefits associated with the RECs that are held for other states' RPSs. To find otherwise would require Washington ratepayers to subsidize ratepayers in the other states.

16 Staff, ICNU and Public Counsel all support imputing revenues associated with Washington's share of RECs that the Company banks for compliance with other states' RPSs, because Washington ratepayers pay for the costs of the renewable resources that generate the RECs.[18/] All parties agree that, if the Commission concludes that ratepayers should receive the benefits associated with other state banked RECs, then the proper way to estimate Washington's share of the REC benefits is to impute additional revenues for Washington's share of the banked RECs.[19/]

17 Staff and PacifiCorp argue that any revenue imputation should focus on the number of RECs PacifiCorp actually sold in 2009 and 2010, which misses the point of imputing REC revenues. Each Washington allocated REC banked for Oregon or California is a REC that PacifiCorp would have been required to purchase in the market to meet those states' RPSs.

[17/] PacifiCorp Brief at ¶ 95; Staff Brief at ¶ 55.
[18/] Staff Brief at ¶ 55; Public Counsel Brief at ¶ 62.
[19/] PacifiCorp Brief at ¶¶ 88-89; Staff Brief at ¶ 55; Public Counsel Brief at ¶ 62.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

Therefore, each and every Washington allocated REC banked for other states' RPS compliance is valuable and should be accounted for when imputing REC values. The only way to ensure that Washington is compensated for each and every one of its allocated RECs is to assume that 100% of RECs banked for other state compliance purchases are sold when imputing REC revenues.

III. CONCLUSION

18 Despite the voluminous testimony and legal arguments stretching over both Phase I and II of this proceeding, the Commission faces a the question: should Washington ratepayers be credited for 100% of the Washington allocated REC revenues associated with renewable resources included in rates starting in 2009? Washington customers have paid their full share of the costs of these resources and should be allowed a full share of all the benefits. There is no legitimate legal, public policy, or factual justification to support charging ratepayers all the costs of renewable resources without allowing them a full share of all the benefits. PacifiCorp's new arguments should be disregarded. PacifiCorp seems to believe that it should be guaranteed a certain level of profit, and if it is not able to manage its operations to achieve this, then it can rely on undisclosed REC revenues for this purpose. This novel view of regulation should be rejected by this Commission.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

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Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Irion A. Sanger
Melinda J. Davison
Irion Sanger
333 S.W. Taylor, Suite 400
Portland, Oregon 97204
(503) 241-7242 phone
(503) 241-8160 facsimile
mjd@dvclaw.com
Of Attorneys for the Industrial Customers of Northwest Utilities