BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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| WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,<br><br>Complainant,<br><br>v.<br><br>PACIFICORP D/B/A PACIFIC POWER & LIGHT COMPANY,<br><br>Respondent. | DOCKET UE-100749 |

# REPLY BRIEF ON BEHALF OF COMMISSION STAFF

## (REC PHASE)

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## I. INTRODUCTION/OVERVIEW[1]

*1* The Commission's policy is that REC revenues belong to ratepayers, and should be returned to ratepayers via a rate credit. To implement that policy, Staff proposes the Commission return to ratepayers Washington's share of actual REC revenues for 2009. Staff also includes Washington's share of REC revenues for certain other RECs the Company should have sold, rather than hold for compliance in Oregon and California. The Commission should track and return to ratepayers REC revenues for subsequent periods on the same basis.

*2* PacifiCorp contends Staff's proposal to return to ratepayers the test year 2009 REC revenues is illegal because it constitutes retroactive ratemaking, violates the filed rate doctrine, violates RCW 80.04.210 by collaterally attacking rates the Commission set in the two prior PacifiCorp rate cases and even violates the federal Constitution.

*3* In fact and in law, Staff's proposal does none of that. There are four primary reasons why this is true: 1) the Commission has not yet returned to ratepayers the REC revenues Staff calculates; 2) Staff's tariff credit proposal operates prospectively only; 3) the 2009 REC revenues at issue are in the test period PacifiCorp filed in this case; and 4) Staff's proposed treatment is similar to Commission treatment of many other revenue and expense items.

*4* At this juncture, we offer a simple example that thoroughly dispels the Company's theories: Assume PacifiCorp files a rate case with a 2008 test period. In setting rates for the 2010 rate year, the Commission considers the costs and output of a renewable resource, as well as the REC revenues associated with that resource. PacifiCorp then files a rate case with a 2010 test period. During that test period, PacifiCorp sold that renewable resource, and enjoyed a $2 million gain. Can the Commission return that gain to ratepayers?

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[1] We refer to each party's first brief on REC issues, filed on November 4, 2011, as their "Initial REC Brief".

5 Under the Company's theories, PacifiCorp would respond "No", arguing that would: 1) constitute retroactive ratemaking, violate the filed rate doctrine and be "double counting", because the rates set in the prior rate case contain the projected power costs for that resource for the 2010 period, and 2) be contrary to ratemaking, because rates are set using only projections, and this one-time sale is not a projection of the future level of the Company's property sales revenues.

6 Staff would respond with an emphatic "Yes", because the new rate case presents a new test period, the property sales revenues at issue have not yet been passed pack to ratepayers, and the actual revenues from the actual sale of the renewable resource is a test-period event presented for Commission disposition. This makes eminent common sense, and is consistent with the Commission's longstanding policy of returning to ratepayers the gain on sale of regulated assets, either in whole or in substantial part.[2]

7 In this Reply, we will explain in further detail why the Commission should reject the Company's theory. However, we ask the Commission to keep in mind this simple example to keep the Company's flawed reasoning in clear focus.

## II. RESPONSE TO PACIFICORP

### A. Start Date Issues

8 This case presents a clash between Staff's practical view of how ratemaking actually has been conducted over the past century, and the Company's single-minded, result-oriented view of the ratemaking process.

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[2] E.g., *Utils. and Transp. Comm'n v. Puget Sound Power & Light Co.*, Cause U-85-53, Second Supplemental Order (May 16, 1986) at 30-34; *Utils. and Transp. Comm'n v. Puget Sound Power & Light Co.*, Docket UE-920433, 11th Supplemental Order (September 21, 1993) at 48-50; *In re Applications of Avista Corp., PacifiCorp, and Puget Sound Energy, Inc.*, Dockets UE-991255, UE-991262 and UE-991409, Second Supplemental Order (March 6, 2000) at 29-35.

*9* The crux of the difference between Staff and Company views is that PacifiCorp thinks returning to ratepayers test period REC revenues involves a "true-up in a future period of revenues received in the test period",[3] when in fact, Staff merely identifies a test period item and addresses it via a separate tariff, consistent with Commission REC policy.

*10* To be sure, there are glimmers of truth in the Company's case. For example, it is true that in setting rates, the Commission is primarily interested in the relationship between revenues, expenses and rate base. However, PacifiCorp ignores the many instances where commissions have focused on specific items a utility incurs during a test period and treats them separately or uniquely, usually to the utility's benefit.[4]

*11* The Company now says these common regulatory practices constitute "retroactive ratemaking" unless they involve deferred accounting, previously approved.[5] Staff acknowledges that deferred accounting is one way for the Commission to address a specific cost or revenue item, but it is not the only way, evidenced by the many instances where commissions have treated specific test period items outside the deferred accounting context, and received judicial approval.[6]

*12* In sum, there is nothing illegal, or even unusual, about Staff's recommendation in this case that the Commission use a start date of January 1, 2009, to return REC revenues to ratepayer, from that date forward, as the preferred way to fulfill the Commission's REC policy. The Commission should reject the Company's contrary arguments.

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[3] PacifiCorp Initial REC Brief at 28-29, ¶ 73 (paraphrased).
[4] *See* Staff Initial REC Brief at 5-9, ¶¶ 12-21 and Breda, Exhibit No. KHB-7TC at 3:11 – 6:2.
[5] PacifiCorp Initial REC Brief at 29-30, ¶¶ 74-76. The Company seems to treats retroactive ratemaking as a hard and fast legal rule. *See*, e.g., PacifiCorp Initial REC Brief at 22-23, ¶¶ 57-58 (referring to retroactive ratemaking as "illegal". We therefore question how PacifiCorp can defend deferred accounting as an "exception". Id. at 24, ¶ 62. In other words, if retroactive ratemaking is "illegal", PacifiCorp has not explained how the Commission can cure that illegality simply by issuing a deferred accounting order.
[6] See footnote 4 supra.

### 1. PacifiCorp's test period-based arguments are inconsistent with how the Commission sets rates

*13* The Company apparently believes that if a type of cost or revenue is projected in one rate case, then the Commission is barred from addressing that type of cost or revenue in the next rate case, if there is an overlap between the new test period presented by PacifiCorp and the rate year from the prior case.[7] This argument is enabled by the Company's seemingly endless string of rate filings, which has created significant overlaps between test periods and rate years.[8]

*14* In fact, the test period in this case was a rate year in the Company's prior rate case, and PacifiCorp uses this Company-created overlap to say Staff is "double counting" REC revenues, "retroactively" collecting 2010 levels of REC revenues, and "collaterally attacking" prior rate orders.[9] In fact, Staff is doing nothing of the kind when it addresses a test period cost or revenue item. As the Commission correctly observed in Docket UT-970766:

> Every rate case is a composite of estimates calculated from past experience and the application of sound judgment. An order gives the Company the opportunity to earn at a given level, reflect relationships between revenues and expenses. *It is not a guarantee that each element will meet estimates.* The proper means to examine those relationships is a general rate case. The Company's remedy for failure to meet authorized rate of return is to file a general rate case.[10]

*15* In other words, when setting rates, it is the relationship between revenues and expenses that is most important, and each case stands on its own in that regard. Moreover, because each case stands on its own, it is perfectly appropriate for the Commission to address

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[7] E.g., PacifiCorp Initial REC Brief at 26-28, ¶¶ 69-71 and at 31, ¶ 80.

[8] In Docket UE-080220, the rate year was October 15, 2008 to October 14, 2009. In the ensuing rate case, Docket UE-090205, the Company used a test period of July 1, 2007 to June 30, 2008, every month of which was *prior to* the rate year from the prior rate case. Further exaggerating the overlap, PacifiCorp filed a calendar year 2009 test period in this case, which was also entirely prior to the calendar year 2010 rate year in Docket UE-090205. Finally, in the most recently-filed PacifiCorp general rate case, Docket UE-111190, PacifiCorp uses a calendar year 2010 test period, which is before the rate year in this case, April 3, 2011 through April 2, 2012 and exactly overlaps the rate year from the Docket UE-090205.

[9] PacifiCorp Initial REC Brief at 27-28, ¶¶ 69-71, and at 31, ¶ 80.

[10] *Utils. and Transp. Comm'n v. US West Commc'ns, Inc.*, Docket UT-970766, 14th Supplemental Order (March 24, 1998) at 8 (emphasis added).

a specific cost or revenue item presented in that new test period.[11] Interestingly, PacifiCorp itself quotes the above passage from Docket UT-970766,[12] but simply misapplies it.

**2. The filed rate doctrine does not apply**

*16* PacifiCorp invokes the filed rate doctrine,[13] but that doctrine is fully satisfied here, based on three unassailable facts: 1) Staff is not challenging any PacifiCorp rate the Commission has set in a prior docket; 2) Staff recommends no refund of a previously charged rate; and 3) any rate credit for REC revenues recommended by Staff would be provided prospectively only.

*17* PacifiCorp essentially concedes the point. On page 4 of its brief, PacifiCorp notes that the figure used for REC revenues in Docket UE-090205 docket was $657,755,[14] and the parties agreed in the Stipulation in that case that that this level of REC revenues was included for 2010.[15] As we have explained, Staff's REC credit calculation subtracts that $657,755, consistent with the Settlement Stipulation the Commission approved in that docket.[16] Consequently, there is in fact no "overlap" or "double-counting".[17]

*18* PacifiCorp goes on to rely on the Commission's decision in Docket UE-010410,[18] but that decision confirms Staff is correct. In that docket, Puget Tariff 125 provided a rate credit of five cents. Later, Puget tried to defer amounts it collected under Schedule 125, and then

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[11] An exception is the Settlement Stipulation in Docket UE-090205, which requires Staff to acknowledge that a specific amount of REC revenue is included in 2010 when asking the Commission to take "any other action" regarding REC revenues for that period. Staff's REC revenue calculation therefore credits that amount. *See* Staff Initial REC Brief at 14-15, ¶¶ 42-44.
[12] PacifiCorp Initial REC Brief at 23-24, ¶ 61.
[13] PacifiCorp Initial REC Brief at 30-31, ¶¶ 77-79.
[14] PacifiCorp Initial REC Brief at 4, ¶ 11.
[15] PacifiCorp Initial REC Brief at 4, ¶ 13, quoting ¶ 22 of the Settlement Stipulation in Docket UE-090205.
[16] See Staff's Initial REC Brief at 15, ¶ 44.
[17] On another level, PacifiCorp signed that Settlement Stipulation, and is getting the benefit of its bargain.
[18] PacifiCorp Initial REC Brief at 30-31, ¶ 78.

charge that amount back to customers via another tariff. This had the effect of requiring "[t]he collective pool of ratepayers [to] pay back the full $.05 [credit previously received]."[19]

*19* Nothing of the sort is going on here. Prior to this case, no ratepayer received the benefit of even one dollar of the REC revenue amount Staff has calculated. Staff's proposal does not touch, let alone collect back from the Company, the $657,755 in REC revenues that we have stipulated are reflected in the rates set in Docket UE-090205. There can be no violation of the filed rate doctrine on these facts.

### 3. There is no violation of RCW 80.04.210 because Staff's calculation is based on test period revenues the Commission has never before considered in setting rates

*20* PacifiCorp argues that Staff's proposal to return 2009 REC revenues to ratepayers violates RCW 80.04.210 by "collaterally attacking" the Commission's rate orders in the 2008 and 2009 rate cases.[20] PacifiCorp is wrong, for the reasons we just explained regarding why the Staff's recommendations do not violate the filed rate doctrine: Staff simply does not challenge any prior rate set by the Commission in the 2008 and 2009 rate cases, or any component thereof. There is no collateral attack going on here; each rate set in each rate case stands on its own.

*21* Indeed, if PacifiCorp's application of RCW 80.04.210 were valid, PacifiCorp's rate filings in this docket and in Docket UE-111190 would constitute a "collateral attack" on the Commission's rate orders in prior Dockets UE-080220 and UE-090205, because the test

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[19] *Re Application of Puget Sound Energy for Authorization Regarding the Deferral of the Net Impact of the Conservation Incentive Credit Program,* Docket UE-010410, Order Denying Petition to Amend Accounting Order (November 9, 2001) at 3, ¶ 8.
[20] PacifiCorp Initial REC Brief at 31-33, ¶¶ 80-83.

periods in those rate filings overlapped the rate years in those prior dockets.[21] This draconian result exposes the fallacy in the Company's application of the statute.

*22* In its search for something to support its "collateral attack" argument (and its general retroactive ratemaking argument), PacifiCorp lands on the ALJ's Initial Order in a recently-dismissed complaint brought by ICNU/Public Counsel.[22] For starters, PacifiCorp inappropriately characterizes that ALJ Initial Order as an order of the "Commission",[23] despite the Company's contrary concession (albeit in a footnote) that the Commission does not endorse the reasoning and conclusions in that order.[24] The Company's footnoted concession is correct, which renders that ALJ Initial Order of little or no utility here.

*23* With that cautionary note, we nonetheless observe that the issue involving a collateral attack and retroactivity addressed in that Initial Order surrounded ICNU/Public Counsel's attempt to amend the Commission's 2009 general rate case order, and give retroactive effect to that amendment.

*24* There is no similar situation here, because Staff is not seeking to disturb any prior approved settlement or other Commission rate decision. Staff simply has located and calculated a test period amount of REC revenues, recognized that none of those revenues has previously been returned to ratepayers or addressed in setting rates, and proposes the Commission return those revenues to ratepayers now, to implement the Commission's REC policy.

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[21] *Id. See* PacifiCorp Initial REC Brief at 3, ¶ 7. The rate year in Docket UE-080220 is October 15, 2008 to October 14, 2009, PacifiCorp Initial REC Brief at 5, ¶ 16. The test year in Docket UE-100749 is the calendar year 2009. PacifiCorp Initial REC Brief at 4, ¶ 11. The rate year in Docket UE-090205 is the calendar year 2010 and the test year is the calendar year 2010 in Docket UE-111190, filed July 1, 2011.
[22] *Attorney General's Office & ICNU v. PacifiCorp*, Docket UE-110070. E.g., PacifiCorp Initial REC Brief at 9-11, ¶¶ 27-30; at 32-33, ¶¶ 81-83 and 23, ¶ 59.
[23] E.g., PacifiCorp Initial REC Brief at 23, ¶ 59.
[24] Id. at 11, footnote 64.

### 4. It is not unconstitutional to return to ratepayers the REC revenues to which they are entitled

*25* PacifiCorp suggests Staff's recommendation to return 2009 REC revenues to ratepayers violates the federal Constitution in two ways, first, because Staff's case allegedly is "antithetical to the ratemaking framework governing the Commission" and thus violating the "end result" test,[25] and second, by somehow providing "ad hoc" treatment of a particular revenue item, allegedly contrary to *Duquesne v. Barasch,* 488 U.S. 299, 102 L. Ed. 2d 646, 100 S. Ct. 609 (1989).[26]

*26* As to the "ratemaking formula" and the "end result" test, the Company ignores the fact that the Commission has ruled as a matter of policy that REC revenues belong to ratepayers and should be returned via a rate credit. Because those revenues do not belong to the Company, and the amount of REC revenues Staff calculated in this case have played no role in the setting base rates for PacifiCorp at any time, the end result test is not implicated, let alone violated.

*27* Also relevant is the example we have used regarding Schedule 96, under which the Company has recovered, dollar for dollar, around $6.2 million in certain excess hydro costs, without ever being subject to an earnings test (i.e., a form of the "end result" test) as a predicate to recovery.[27] The Company has collected that revenue without ever suggesting it violated the "end result" test. PacifiCorp cannot have it both ways. If the Company insists on applying its version of the "end result" test, the Company should return that $6.2 million.

*28* In a related argument, PacifiCorp complains the Company did not earn its "authorized" return, but even if true, that simply means that as events actually played out, the

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[25] PacifiCorp Initial REC Brief at 32, ¶ 82.
[26] PacifiCorp Initial REC Brief at 29, ¶ 75.
[27] See Staff Initial REC Brief at 6 ¶ 14.

rates the Company stipulated to, and agreed were fair, just, reasonable and sufficient,[28] may not have lived up to that standard. That may justify a new rate filing, but that does not justify the Company asserting a constitutional right to REC revenues. Those revenues belong to ratepayers, as the Commission has ruled.

*29* Turning to the Company's "ad hoc" argument based on words from *Duquesne v. Barasch*, we note at the outset that the Court's reference to "ad hoc" treatment of a utility is dicta. Dicta do not constitute a constitutional principle. But even if such dicta presented a concern, Staff's proposed treatment of REC revenues is not "ad hoc", because such treatment is just one among many instances where commissions have focused on a particular cost or revenue item and provided special treatment when the public interest requires it.

*30* Staff's testimony and Initial REC Brief identified several of these practices, such as abandoned plant amortizations, one-time Y2K expense recovery, pension gain amortizations, excess hydro costs and extraordinary storm damage expenses.[29] Many others are chronicled by Mr. Krieger in his article, *The Ghost of Regulation Past: Current Applications of the Rule Against Retroactive Ratemaking in Public Utility Proceedings*, 1991 U. Ill. L. Rev. 983 (1991).

*31* It is enlightening to note that elsewhere in PacifiCorp's Initial REC Brief, the Company argues that deferred accounting is an "exception" to the retroactive ratemaking rule.[30] Yet, by definition, an "exception" is "ad hoc" the first time it is proposed. Thus, if PacifiCorp's argument is correct that any "ad hoc" ratemaking treatment violates the Constitution, then it must follow that the use of deferred accounting has violated the

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[28] *Utils. and Transp. Comm'n vs. PacifiCorp,* Docket UE-080220, Settlement Stipulation (August 1, 2008) at 8 ¶28.
[29] Breda, Exhibit No. KHB-7TC at 3:21 to 5:6; Staff Initial REC Brief at 6-9, ¶¶ 15-21.
[30] PacifiCorp Initial REC Brief at 24-25, ¶¶ 62-65.

Constitution from the time it was first proposed. This exposes PacifiCorp's argument as too narrowly drawn to assist the Commission.

*32* If there is anything unusual here, it is that the REC revenues in this case present the rare example of a ratemaking treatment where the ratepayer gets a benefit, rather than the utility. Put another way, there is nothing unconstitutional about giving ratepayers the REC revenues to which they are entitled, just as there is nothing unconstitutional when PacifiCorp and the other utilities in this state benefit from special treatment of other test period revenues or expenses.

### 5. Deferred accounting is not the only way to address test period 2009 REC revenues

*33* PacifiCorp argues that a deferred accounting petition is required before the Commission can address test period REC revenues.[31] First, this PacifiCorp argument is premised on the notion that treating test period REC revenues is retroactive ratemaking, and as Staff has explained, that simply is not true.[32]

*34* Moreover, the Company's argument is belied by experience. In this very case, the parties agreed to shorten the amortization period for $SO_2$ allowances[33] without the necessity of filing an accounting petition or even reopening the docket[34] in which the Commission first approved that amortization. The point is that the $SO_2$ amortization period issue, like test period REC revenues, is before the Commission in this case and the Commission is able to address it.

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[31] PacifiCorp Initial REC Brief at 24-26, ¶¶ 62-68.
[32] Staff Brief at 2 ¶¶ 6-7.
[33] Dalley, Exhibit No. RBT-4T at 4:14-19.
[34] *Utils. and Transp. Comm'n vs. PacifiCorp,* Docket UE-940947, Commission Decision and Order Granting Authorization (September 14, 1994) at 3.

35 Another clear example that refutes PacifiCorp's argument is the 1999 Avista rate case, which was based on a 1998 test year.[35] One issue was the "PGE Contract Buy Down", in which Avista decided to assign to a subsidiary a contract obligation Avista had to PGE, in return for $143.4 million. While Avista received the $143.4 million (system), it amortized that amount on its books, such that during the test year, Avista was receiving annual revenues of $1.8 million.[36]

36 To address the transaction, the Commission determined that Avista's power supply costs should be increased by $18 million per year,[37] but ordered Avista to reflect the time value of Washington's share of the $143.4 million lump sum payment Avista received in 1998 "in the balance of funds available on October 1, 2000", i.e., the 21 month period after the end of the test period.[38] In other words, the Commission addressed an issue presented in the test period results of operations before it, and did what PacifiCorp says the Commission cannot do.

37 Nonetheless, Staff can agree that if there is no rate case pending that involves the costs or revenues at issue, a deferred accounting petition typically is required. The Commission decisions PacifiCorp cites for the need for deferred accounting did not involve a pending rate case addressing treatment of the costs at issue.

38 Staff's position in this regard is amply supported by the Olympic Pipeline (OPL) decision relied on by PacifiCorp.[39] In that 2001 rate case, OPL advocated the use of a "trended original cost" rate base methodology, in which OPL calculated a "starting rate base"

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[35] *Utils. and Transp. Comm'n v. Avista Corp.,* Dockets UE-991606 and UG-991607, Third Supplemental Order (September 29, 2000) at 10, ¶ 22.
[36] Id. at 27, ¶ 71.
[37] Id. at 28, ¶ 74. The $18 million figure was $16.2 million plus the booked amount of $1.8 million.
[38] *Utils. and Transp. Comm'n v. Avista Corp.,* Dockets UE-991606 and UG-991607, Fourth Supplemental Order on Reconsideration (November 9, 2000) at 3-4, ¶ 12.
[39] *Utils. and Transp. Comm'n v. Olympic Pipeline Co.,* Docket TO-011472, 20th Supplemental Order (September 27, 2002) (OPL Order), discussed by PacifiCorp in its Initial REC Brief at 25, ¶ 65.

at the 1983 level, and then added to that amount a "deferred return", which represented the amount by which the pipeline company's authorized return was impacted by inflation *each year from 1983 to 2001* (!).[40]

*39* Not surprisingly, the Commission rejected that radical approach, reasoning that because the Commission had not previously allowed deferral of earnings in 1983, the pipeline's proposal would, "by definition, [create] a situation in which future ratepayers pay for past costs",[41] thus creating a "risk" of retroactive ratemaking.[42]

*40* Obviously, there is no such risk in this case, because here we are dealing with test period amounts of REC revenues, none of which previously have been passed back to ratepayers, and none of which PacifiCorp enjoyed prior to the test period. A deferred accounting order is not a predicate for the Commission to address the revenues before it in this docket.

*41* In that regard, we note that in Cause U-82-38,[43] Puget did not file a deferred accounting petition for deferral and subsequent recovery of abandoned nuclear plant costs. Rather, Puget sought such recovery in a rate case with a test period in which the utility wrote off the plant, thus presenting the Commission with the issue of how to address that one-time test-period extraordinary property loss. Similarly, no deferred accounting petition was filed by Avista relating to Y2K compliance costs, but in rate case Dockets UE-991606 and UG-991607,[44] the Commission granted Avista a five-year recovery of the Company's one-time Y2K compliance costs the utility had recorded in the test period.

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[40] OPL Order at 32, ¶ 106.
[41] Id. at 33, ¶ 112.
[42] Id at 34, ¶ 117.
[43] *Utils. and Transp. Comm'n v. Puget Sound Power & Light Co.,* Cause U-82-38, Third Supplemental Order (July 22, 1983).
[44] *Utils. and Transp. Comm'n v. Avista Corp.,* Dockets UE-991606 and UG-991607, Third Supplemental Order (September 29, 2000) at 63, ¶ 234.

42 The list goes on, but the point is that rate case treatment of test period items does not require a previously-filed deferred accounting petition. PacifiCorp is flat wrong to contend otherwise.

### 6. The "matching" principle and discouragement of "single-issue ratemaking" are important, but they do not dictate the public interest

43 PacifiCorp argues that Staff's treatment of REC revenues in this case violates the "matching principle" and constitutes "single-issue ratemaking".[45] Because these two arguments are essentially the same, we address them as one.

44 Staff agrees that the "matching" principle and discouragement of "single-issue ratemaking" are important principles, but they are not codified in a statute, and the Commission has departed from these principles when the public interest requires it.[46]

45 For example, we note that historically, PacifiCorp has coveted a PCAM. Yet, we cannot recall the Company ever complaining about how a PCAM creates "mismatches" through the deferral and surcharge true-up process, or constitutes "single-issue ratemaking", by focusing solely on power costs. Most PCAMs are guilty on both counts.

46 Another example involves the abandoned nuclear plant costs the Commission allowed Puget to collect over 10 years in Cause U-82-38.[47] Those costs did not "match" any costs those utilities Puget incurred over that 10 year recovery period. Nor was the Commission "projecting" a representative level of extraordinary property losses the utility would be incurring over the "rate effective" period, or any other period. Rather, the Commission simply was evaluating a single test year item (a substantial extraordinary property loss) and

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[45] PacifiCorp Initial REC Brief at 33-35, ¶¶ 84-87.
[46] Staff witness Ms. Breda noted several common ratemaking practices that are not strictly consistent with the "matching" principle. Most or all of these examples also involve single-issue ratemaking. Exhibit No. KHB-7TC at 3:11 – 6:3. These and other examples are discussed in Staff's Initial REC Brief at 5-9, ¶¶ 12-21.
[47] *Utils. and Transp. Comm'n v. Puget Sound Power & Light Co.,* Cause U-82-38, Third Supplemental Order (July 22, 1983).

using an amortization as a vehicle for ratepayers pay investors the utility's cost of that failed project.

*47* Similarly, the $6.2 million in excess hydro costs the Commission approved for recovery in Docket UE-090200 were attributable to periods prior to when the Company recovered those costs, and thus did not "match" any costs the Company incurred over that later three year (approximate) recovery period. Nor is there "matching" of any test period cost item when ratepayers separately pay for the Company's conservation programs, dollar for dollar, via the tariff surcharge in Schedule 191.

*48* These last two examples are classic examples of "single-issue ratemaking" because they collect specific costs outside the traditional ratemaking process. They represent but a few of the many items that have merited unique treatment by the Commission in the public interest, usually for the utility's sole benefit.

*49* In sum, the Commission should not allow PacifiCorp to hide behind the "matching" and "single-issue ratemaking" principles in this case, when the Company and the other utilities have been the primary beneficiaries of non-application of those principles many times before now.

### 7. The Commission should reject PacifiCorp's power cost offset idea

*50* A recurring Company lament is that if REC revenues are to be returned to ratepayers, then any increase to the Company's net power costs should offset that amount.[48] The Commission should reject that argument out of hand, either as beyond the scope of this phase of the proceeding[49] or violating the Commission's policy determination that REC revenues must be returned to ratepayers via a rate credit, or both. The Company had the opportunity to

[48] E.g., PacifiCorp Initial REC Brief at 34, ¶ 85-86.
[49] The issues for this phase are whether REC proceeds have been accounted for, and the proper start date for calculating REC revenues. Order 06 at 71-73, ¶¶ 203-208.

seek recovery of these costs in the general rate case phase of this case, and elected not to. In any event, the Commission could reject this Company proposal for the threshold reason the Company failed to demonstrate the prudence of these costs.

**B. Calculation Issues**

*51* Staff calculates a reasonable share of REC revenues based on Washington's share of REC sales PacifiCorp actually sold and booked during the test period, plus a measure of imputed Washington RECs PacifiCorp could and should have sold and then booked, had the Company not decided to hold those RECs for compliance in Oregon and California.[50]

*52* PacifiCorp's confusing array of opposing arguments can be boiled down to what PacifiCorp packs into Paragraph 71 of its Initial REC Brief. There, the Company attempts to castigate Staff's and ICNU/Public Counsel's calculations as allegedly "re-establishing 2009 REC revenue levels", which PacifiCorp says is "unprecedented" and also is "double counting" by allegedly using "historic and forecast revenue level for the same revenue item in one case", and including "imputed" REC revenues PacifiCorp never "actually received".[51]

*53* First off, Staff is not "re-establishing" 2009 REC revenue levels any more than the Commission "re-establishes" a utility's wage and salary expense when a new rate case is filed. All test period figures are available for examination and treatment. In this case, as to REC revenues, Staff examined the test period actual REC revenues in determining the appropriate amount to return to ratepayers, consistent with Commission REC policy.

*54* As for imputed REC revenues, Staff agrees that, by definition, PacifiCorp never "actually" received those revenues; hence, they must be imputed. The Company did not actually receive those revenues because the Company inexcusably held those Washington

[50] Staff Initial REC Brief at 15-18, ¶ ¶ 46-55.
[51] PacifiCorp Initial REC Brief at 28, ¶ 71-72.

RECs for the benefit of other states.[52] PacifiCorp cannot defend that inappropriate and unfair conduct, and makes no effort to do so.

*55* Imputation is essential to prevent an inequity. The Company cannot hold a Washington-allocated asset for the benefit of another state, without compensation to Washington. The fact that PacifiCorp never actually received that revenue is not a deficiency in Staff's calculation; it is a deficiency in the Company's REC management practices, and imputation is the remedy.

*56* As to PacifiCorp's statement that Staff is using "historical and forecast" levels of REC revenues, that Company statement is false.[53] In fact, Staff consistently has used only actual levels of REC revenues PacifiCorp booked.[54] For the imputed piece, Staff uses only Washington's actual share of actual 2009 RECs the Company actually held for compliance in other states, and applies the actual realized percentage PacifiCorp sold in 2009 at an average actual sales price for 2009.[55]

*57* For the above reasons, the Commission should reject PacifiCorp's primary computation arguments, which flow from false assumptions and seek to excuse or ignore the Company's own inappropriate conduct. We address the Company's technical arguments below.

**1. There is no basis for including an offset for 2008 REC revenues**

*58* The rates set in Docket UE-080220 were the result of a "black box" settlement. For that reason alone, there is no basis to conclude that any particular cost is reflected in those

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[52] Breda, Exhibit No. KHB-7TC at 7:14-18 and 8:9 to 10:8, and Exhibit No. KHB-9TC at 2-4

[53] PacifiCorp cites Ms. Breda's direct testimony, Exhibit No, KHB-7TC at 11:3-4 for the proposition that Staff agrees REC revenues were included as a forecast in this case. PacifiCorp Initial REC Brief at 27 ¶ 70. In fact, all her testimony refers to at that point is what the Company filed, not what is included in Staff's case or the Commission's rate order.

[54] *See* Staff Initial REC Brief at 3-4, ¶ 8.

[55] Breda, Exhibit No. KHB-7TC at 8:9 – 9:6 and Exhibit No. KHB-8C at 18-28 and 37-47.

rates.[56] Undeterred, PacifiCorp urges the Commission to recognize $576,254 of 2008 REC revenues, based solely on the fact that the Company's initial filing in that docket included REC revenues in that amount, and no party objected to the number in the Company's direct case, leading the Company to offer pure speculation that this "indicates that *some level* of REC revenues was included in rates"[57]

*59* The Company is wrong. First, a "black box" means there is no identification of any specific item of cost or revenue. Thus, each settling party could have contemplated any amount of REC revenues (including zero) and still concluded that the resulting rates were fair, just and reasonable. Moreover, the Commission has never required a party to "object" to the level of any item included in a utility's direct case in order to reach and support a settlement acceptable to the Commission. Finally, even if the Commission assumed away all of the foregoing, PacifiCorp still is left only to speculate that "some level" of REC revenues were included in the 2008 black box. That is not enough to sustain the Company's burden of proof of what that level actually was, if any.

*60* In short, there remains nothing to support this Company argument and the Commission should reject that argument accordingly.

**2. Staff's calculation of 2009 and 2010 REC revenue is accurate and appropriate**

*61* The Company says Staff proposes a "retroactive reallocation" of the methodology used by the Company in its 2009 and 2010 Commission Basis Reports and all its Quarterly REC reports,[58] by considering 2009 and 2010 RECs held by PacifiCorp for compliance in Oregon and California and otherwise not available for sale. The reports to which PacifiCorp refers were made available by the Company in 2010 and 2011, but then were revised by the

[56] Staff Initial REC Brief at 14, ¶ 41.
[57] PacifiCorp Initial REC Brief at 36, ¶ 91 (emphasis added).
[58] PacifiCorp Initial REC Brief at 35-36, ¶ 89.

Company through its May 24, 2011, filing in this case, and the Company revised its 2010 REC report again in Exhibit No. SJK-6.

*62* But despite the shifting Company numbers, the issue is whether the Staff's calculation is accurate. Staff stands by its calculation, which was explained in detail by Ms. Breda in her testimony.

*63* PacifiCorp claims Staff "mixes and matches allocation methods",[59] but this claim is based on PacifiCorp's mischaracterization of Staff's approach as using forecasts, when Staff did not use forecasts; Staff used only actual REC revenue data to determine an appropriate share of REC revenues for Washington. In fact, Staff's calculation flows directly from the 2009 and 2010 actual REC revenues contained in the Company's quarterly REC reports to the Commission, as revised by PacifiCorp in Exhibit Nos. SJK-2C and SJK-6C.[60]

As Ms. Breda explained in detail, and as shown in her exhibits, Staff begins with the Company's calculation of these actual, recorded REC revenues[61] and adds imputed REC revenues for Washington's share of RECs PacifiCorp held for compliance in Oregon and California.[62] This is not "mixing and matching" allocation methods; it is simply accounting for REC revenues PacifiCorp realized during the period[63] and calculating revenue the Company should have realized for Washington's share of RECs PacifiCorp inappropriately decided to hold for compliance elsewhere.

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[59] PacifiCorp Initial REC Brief at 38, ¶ 94.
[60] Breda, Exhibit No. KHB-7TC at 6:19 to 9:6.
[61] Breda, Exhibit No. KHB-8C at 1 and Exhibit No. SJK-2C at 1, plus Exhibit No. SJK-6C at 1. Note that Company Exhibit No. SJK-6C corrects Exhibit No. SJK-3C and agrees with Staff Exhibit No. KHB-8C at 1:3.
[62] Breda, Exhibit No. KHB-8C at 1:4.
[63] Staff Initial REC Brief at 16, ¶ 48.

### 3. PacifiCorp's responses to Bench Requests 4 and 8 are inaccurate or incomplete

*64* The Commission asked PacifiCorp to provide additional information on the Company's REC revenue calculations, but two of the Company's responses are not sufficient.

*65* First, in PacifiCorp's response to Bench Request 4, the Company inaccurately states, "Staff's approach incorrectly assumes that there will *never* be a market in which to sell the RECs from the other resources." (Emphasis added). In fact, Staff's assumption is that these RECs "do not currently have a market",[64] which is exactly what PacifiCorp stated in its response to Staff Data Request 175.[65] The Company goes on to suggest these RECs may be marketable at some point in the future, but that simply adds further support to Staff's proposal to base REC revenue calculations on actual data, rather than projections.

*66* Second, with regard to PacifiCorp's response to Bench Request 8, second paragraph, the Company states that it will use all eligible RECs generated in the west control area to meet RPS requirements in Washington, Oregon, and California, and is unable to calculate the actual data. However, the most recent data in Ms. Kusters' Exhibit No. SJK-10C, suggests the contrary. In that exhibit, PacifiCorp already has calculated REC revenues for January, February and March 2011, and shows substantial recent REC revenue sales for the western control area: [redacted]

[64] Breda, Exhibit No. KHB-7TC at 8:14-15.
[65] Exhibit No. SJK-8.

[redacted].[66] Again, however, Staff's proposal to use actual data means the Commission does not need to rely on what the Company thinks it might do.

*67* PacifiCorp also states that Staff has not explained how its method would be applied in the future, but the record shows Staff is clear that the calculation should be based on actuals, not projections, and Staff's exhibit shows the method.[67] While that exhibit literally applies only to 2009 and 2010, the same method would apply to future periods.

**C. Tariff Issues**

*68* Staff proposes the Commission provide the bill credit under Tariff Schedule 95 using a tracking account that includes the full value of REC revenue based on Staff's calculations, from January 1, 2009, forward.[68] The Commission should reject the Company's proposal to use projections to set the tariff rates, because of the Company's well-documented history of grossly inadequate forecasts.[69]

*69* Staff has held a consistent position regarding REC revenues, urging the Commission to return to ratepayer's revenue related to RECs from January 1, 2009, forward.[70] PacifiCorp has consistently portrayed Staff's position inaccurately, by calling the $4.8 million currently being returned to ratepayers a "forecast".[71]

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[66] This is the first step in Staff's calculation, Exhibit No. KHB-8C at 1. Washington's share of RECs PacifiCorp held for compliance in other states, if any, for the first quarter of 2011, are not currently part of the record. However, calculating the appropriate imputation amount would simply follow the same steps as Staff has outlined in Ms. Breda's Exhibit No. KHB-7TC at 8:9-23 and Exhibit No. KHB-8C at 1, lines 18-28 and 37-47.

[67] Breda, Exhibit No. KHB-7TC at 6:7 – 10:7 and Exhibit No. KHB-8C.

[68] Staff Initial REC Brief at 18, ¶ 56, Breda, Exhibit No. KHB-7TC at 10-11, Foisy, Exhibit No. MDF-1T at 11:3-8.

[69] Breda, Exhibit No. KHB-7TC 10-11 and Staff Initial REC Brief at 18-19, ¶ ¶ 56-58 Staff suggests maintaining the current rate until the tracking account is exhausted, or until ongoing REC sales indicate a different credit rate is appropriate.

[70] Foisy, Exhibit No. MDF-1T at 10:20-23; Staff Rate Case Brief at 6, ¶ 24; Staff's May 24, 2011, filing at ¶ 4-5; Breda, Exhibit No. KHB-7CT at 7:4 to 10:7; Staff Initial REC Brief at 3-4, ¶ 8.

[71] Kelly, Exhibit No. ALK-2CT at 7:19-23, PacifiCorp Initial REC Brief at 5, ¶ 16.

70 In fact, that $4.8 million is an actual figure, as Mr. Dalley clearly states in his prepared testimony in the rate case phase of this docket: "[redacted] adds [redacted]."[72]

## III. RESPONSE TO ICNU/PUBLIC COUNSEL

71 Staff has reviewed ICNU and Public Counsel's Initial REC Briefs and finds Staff's result is generally consistent with the result advocated by ICNU/Public Counsel. There are some differences in calculation and theory.

72 Staff's calculation of REC revenue differs from ICNU/Public Counsel's calculation in three ways: 1) Staff recognizes REC revenue when booked, rather than when they were generated; 2) Staff considers only marketable RECs rather than all RECs generated; and 3) Staff uses PacifiCorp's actual percentage of RECs sold, rather than assume PacifiCorp would sell [redacted] percent of Washington's share of held RECs. For the reasons we stated in our Initial REC Brief,[73] Staff's method is the more appropriate way to provide ratepayers full value of RECs to which they are entitled.

73 As to theory, to the extent ICNU/Public Counsel base their case on the "extraordinary item" and "failure to disclose" exceptions to the retroactive ratemaking rule, Staff would respond that because addressing test period 2009 REC revenues in this docket is not retroactive ratemaking, those exceptions are not relevant. If the Commission decides those exceptions are relevant, it appears to Staff that ICNU/Public Counsel have presented a substantial case for the Commission to apply those exceptions.

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[72] Dalley, Exhibit No. RBD-4T at 10:15-18 (revised December 10, 2010) (emphasis added).
[73] Staff Initial REC Brief at 15-17, ¶¶ 46-55.

## IV. CONCLUSION

*74* For the reasons stated above and in Staff's Initial REC Brief, the Commission should calculate REC revenues to be [redacted] for 2009 and [redacted] for 2010, based on a start date of January 1, 2009. The Commission should order PacifiCorp to continue to track Washington share of REC sales proceeds based on Staff's proposed calculation methods, and return them to ratepayers via the tariff credit mechanism as proposed by Staff.

DATED this 18th day of November 2011.

Respectfully submitted,

ROBERT M. MCKENNA
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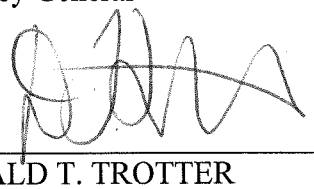

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