

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKET UE-100749
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	ORDER 10
	)	
v.	)	
	)	ORDER ESTABLISHING
PACIFICORP D/B/A PACIFIC	)	DISPOSITION OF PROCEEDS
POWER & LIGHT COMPANY,	)	FROM THE SALE OF
	)	RENEWABLE ENERGY CREDITS
Respondent.	)	
	)	
.....	)	

**Synopsis:** *The Commission requires PacifiCorp to credit to its customers the proceeds from the sale of all renewable energy credits attributable to Washington that were or are booked on or after January 1, 2009, less the \$657,755 included in rates as a result of the settlement agreement the Commission approved in Docket UE-090205 and the credits PacifiCorp provided to customers beginning April 3, 2011, in compliance with Order 06 in this proceeding. Those credits must include the market value of credits withheld to satisfy Oregon and California renewable portfolio standards but that should have been allocated to Washington under the West Control Area methodology. The Commission modifies the tracking mechanism established in Order 06 to credit actual sale proceeds, rather forecasted amounts with a true-up, and requires the parties to submit proposals or an agreed mechanism for implementing the credits.*

**BACKGROUND**

1 By Order 06, entered March 25, 2011, the Washington Utilities and Transportation Commission (Commission) resolved all issues regarding PacifiCorp d/b/a Pacific Power & Light Company’s (PacifiCorp or Company) request for a general rate increase except for certain issues regarding the appropriate treatment of the proceeds from the Company’s sale of Renewable Energy Credits (RECs). The Commission concluded that those proceeds should be distributed to PacifiCorp’s ratepayers as a

bill credit, but deferred consideration of the remaining issues pending receipt of additional evidence and briefing.

2 Order 06 required PacifiCorp to file the following information:

- a detailed accounting of all REC proceeds during the period January 1, 2009, to the most recent date for which data are available;
- a detailed proposal for operation of the tracking mechanism going forward; and
- a detailed discussion of the allocation method(s) the Company uses or proposes to use.

3 On May 24, 2011, the Company timely filed the required documents. Commission Staff (Staff)<sup>1</sup> filed comments on the Company's proposal and made an alternate proposal. The Industrial Customers of Northwest Utilities (ICNU) and the Public Counsel Section of the Office of the Attorney General (Public Counsel) requested additional time to file alternate proposals.

4 By Notice issued June 21, 2011, the Commission required the parties to file testimony and exhibits in support of their positions and scheduled a prehearing conference to establish a procedural schedule. On July 8, 2011, the Commission entered Order 08 establishing a procedural schedule, including an evidentiary hearing.

5 The Company filed direct testimony on August 8, 2011. On September 9, 2011, Public Counsel and ICNU (collectively referred to as the Joint Parties) jointly filed responsive testimony, and Staff also filed testimony. On September 30, 2011, PacifiCorp filed rebuttal testimony and Staff filed cross-answering testimony.

6 At the parties' request, the Commission cancelled the evidentiary hearing. By Order 09 entered October 31, 2011, the Commission admitted into evidence the stipulated prefiled testimony and exhibits and all submitted cross-examination exhibits in this

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<sup>1</sup> In formal proceedings, such as this, the Commission's regulatory staff participates like any other party while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

case. That evidence includes the testimony of Andrea L. Kelly, Stacey J. Kusters, and R. Bryce Dalley sponsored by PacifiCorp; the testimony of Kathryn H. Breda sponsored by Staff; and the testimony of Donald W. Schoenbeck, sponsored by the Joint Parties. The Company, Staff, Public Counsel, and ICNU each filed initial and reply briefs.

- 7 By Notice issued December 21, 2011, the Commission set oral argument in this matter for January 31, 2012. PacifiCorp, Public Counsel, ICNU, and Staff presented oral argument.

### **APPEARANCES**

- 8 In this phase of the proceeding,<sup>2</sup> Katherine A. McDowell, McDowell, Rackner & Gibson PC, represents PacifiCorp. Irion Sanger, Davison Van Cleve, P.C., Portland, Oregon represents ICNU. Sarah Shifley, Assistant Attorney General, Seattle, Washington, represents Public Counsel. Donald T. Trotter, Senior Counsel, Olympia, Washington, represents Commission Staff.

### **DISCUSSION AND DECISION**

#### **A. Introduction and Summary**

- 9 Washington’s Energy Independence Act (EIA) defines RECs, in relevant part, as “a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource” that “includes all of the nonpower attributes associated with that one megawatt-hour of electricity.”<sup>3</sup> The United States Environmental Protection Agency similarly has determined that a REC “represents the property rights to the environmental, social, and other nonpower qualities of renewable electricity generation.”<sup>4</sup> Consistent with these definitions, the Commission previously defined RECs as “intangible assets that represent the right to claim the environmental

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<sup>2</sup> The Energy Project and Wal-Mart, Inc., did not actively participate in Phase II of this docket.

<sup>3</sup> RCW 19.285.030(17).

<sup>4</sup> Environmental Protection Agency, Green Power Partnership, Renewable Energy Certificates (RECs), <http://www.epa.gov/greenpower/gpmarket/rec.htm> (EPA Green Power Website).

attributes of a renewable generation facility associated with electricity generated from that facility.”<sup>5</sup>

10 Under the EIA, an electric utility is required to provide a specified percentage of power delivered to its customers either from its own renewable generator output or by purchasing RECs from another utility or power generator.<sup>6</sup> A REC, therefore, is a form of renewable energy currency that can be traded for cash or held to meet the renewable generation targets established by the EIA.<sup>7</sup>

11 RECs are of relatively recent vintage, having arisen as the result of state requirements that utilities generate significant amounts of their electricity using renewable resources. The EIA, for example, was enacted only five years ago as Initiative Measure No. 937 approved by Washington voters on November 6, 2006. Typical of nascent markets, the sale of RECs has been characterized by volatility as affected utilities determine the need, availability, and value of this new commodity.<sup>8</sup>

12 Accordingly, the Commission has had few opportunities to consider the nature of RECs and more specifically the distribution of REC sale proceeds. The only case in which we have dealt with these issues in depth arose from a petition Puget Sound Energy (PSE) filed for a Commission determination of how to distribute funds PSE was collecting from REC sales. In that case, we analogized REC sales to utility property sales and permitted PSE to retain a portion of the total proceeds while returning the vast majority to ratepayers, either directly through credits and a reduction in rates or indirectly through funding of a low income assistance program.<sup>9</sup>

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<sup>5</sup> *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 UE-070725, Order 03, ¶ 13 (May 20, 2010) (PSE REC Order).

<sup>6</sup> RCW 19.285.040 (2)(a).

<sup>7</sup> *See, e.g.*, EPA Green Power Website, REC White Paper at 1 (July 2008) (“RECs are increasingly seen as the ‘currency’ of renewable electricity and green power markets. They can be bought and sold between multiple parties, and they allow their owners to claim that renewable electricity was produced to meet the electricity demand they create.”).

<sup>8</sup> PacifiCorp, for example, originally estimated that the value of the RECs attributable to Washington in 2010 would be \$657,755, but the Company actually realized several million dollars from the sale of its Washington RECs during that calendar year.

<sup>9</sup> PSE REC Order ¶ 13.

13 The Commission's prior consideration of PacifiCorp's REC sale proceeds has been far more limited. Prior to this docket, the only occasion we had to address PacifiCorp's RECs was in the context of the Company's 2009 rate case.<sup>10</sup> Our order resolving that case approved a settlement among all parties that included PacifiCorp's agreement to undertake future reporting and information sharing on REC sales.<sup>11</sup> The order made no determination on the calculation or amount of the Company's REC sale proceeds or how those funds should be distributed. Rather, the Commission simply approved the parties' settlement agreement, which made only an oblique reference to those issues:

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.<sup>12</sup>

With respect to RECs, therefore, the Commission's order in PacifiCorp's 2009 rate case did nothing more than approve rates that the parties agreed included \$657,755 in REC sale proceeds.

14 Accordingly, we address the nature and distribution of PacifiCorp's REC sale proceeds for the first time in this proceeding. We found in Order 06 that "neither the record nor the briefing on legal issues [was] fully sufficient to make all necessary determinations" on REC sale proceeds,<sup>13</sup> but pending further proceedings we required that "the proceeds derived from the sale of RECs . . . be returned to customers . . . in the form of bill credits, identified separately on customers' monthly bills."<sup>14</sup> We now

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<sup>10</sup> The Joint Parties filed a complaint against PacifiCorp with respect to the calculation of the REC sale proceeds in that case, but the presiding administrative law judge issued an initial order dismissing the complaint on grounds not relevant to the disposition of this case. *Public Counsel & ICNU v. PacifiCorp*, Docket UE-110070, Order 01 (April 27, 2011). That initial order became final without Commission review.

<sup>11</sup> *WUTC v. PacifiCorp*, Docket UE-090205, Order 09, ¶¶ 37-42 & 61-62 (Dec. 16, 2009).

<sup>12</sup> *Id.* Attachment (Settlement Agreement) ¶ 22.

<sup>13</sup> Order 06 ¶ 201.

<sup>14</sup> *Id.* ¶ 202.

make the necessary determinations on the disposition of PacifiCorp's REC sale proceeds.

- 15 The parties present three major issues for us to resolve. First, and primarily, we must decide the period during which the Company accumulated REC sales proceeds that PacifiCorp must credit to its customers. To make this decision, we must determine the date on which the creditable amounts began to accrue. PacifiCorp contends that the credits should only include the REC sale proceeds it received after April 3, 2011, the date the rates approved in Order 06 became effective, claiming that earlier proceeds were included in the rates the Company charged prior to that date. Staff and the Joint Parties counter that REC sale proceeds other than \$657,755, should not be considered to have been part of the rates prior to April 3, 2011, and the customer credits should include all REC sale proceeds generated after January 1, 2009.
- 16 Second, we must determine which PacifiCorp generators are to be included in the calculation of benefits.<sup>15</sup> At least for RECs generated prior to April 3, 2011, the Company contends that Washington should be allocated RECs only after the Company has withheld RECs needed to comply with renewable portfolio standards (RPS) in Oregon and California. The other parties argue that Washington should be allocated its share of PacifiCorp's RECs based on this jurisdiction's adopted cost allocation used to set rates before any RECs are used for RPS compliance.
- 17 Third and finally, we must determine the mechanism for issuing the customer credits. We established an interim credit mechanism in Order 06, but all parties request that we make some adjustments to that mechanism. Principally, PacifiCorp requests that the credits be calculated on a calendar year basis, while the other parties propose that the Commission require credits based on actual REC sales proceeds, rather than forecasts with a true up.

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<sup>15</sup> PacifiCorp is a multi-state utility with renewable generators located in most of the states in which it operates. The argument between the parties centers on what generators will be included to calculate Washington's share of REC sale proceeds.

18 For the reasons discussed below, we determine that PacifiCorp must credit to ratepayers the entirety of REC sale proceeds the Company booked on or after January 1, 2009, less the \$657,755 included in rates as a result of the settlement agreement the Commission approved in Docket UE-090205, and less the amounts credited to customers in compliance with Order 06. We also determine that those proceeds should include the market value of all RECs the Company withheld for RPS compliance in other states that should have been allocated to Washington under the West Control Area (WCA) methodology. Finally, we revise the tracking mechanism established in Order 06 to credit actual sales proceeds, rather than forecasts, on a calendar year basis and require the parties to submit proposals or an agreed mechanism for implementing these requirements.

#### **B. Disposition of Historic REC Sale Proceeds**

19 PacifiCorp has generated proceeds from REC sales since at least 2009. The Company does not dispute that those proceeds belong to its ratepayers. Rather, PacifiCorp contends that until April 3, 2011, the date on which the rates the Commission approved in this docket became effective, the Company's rates included those proceeds.

20 PacifiCorp asserts that RECs are akin to, or an element of, net power costs, and forecasts of these costs and revenues were incorporated into the rates the Commission approved in PacifiCorp's 2008 and 2009 rate cases, Dockets UE-080220 and UE-090295. According to PacifiCorp, Order 06 in this docket was the Company's first notice that REC sale proceeds would be treated differently than other costs and revenues used to establish rates. The Company claims that reaching back without prior notice to allocate to ratepayers the actual REC sale proceeds from January 1, 2009 through April 2, 2011 (Historic REC Sale Proceeds) would run afoul of the filed rate doctrine,<sup>16</sup> represent retroactive, single-issue ratemaking,<sup>17</sup> and collaterally attack prior rate case decisions.<sup>18</sup>

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<sup>16</sup> The filed rate doctrine prohibits a public utility from charging rates for its services different from the rates properly filed with the regulatory agency. The "purpose of the doctrine is to ensure that the filed rates are the exclusive source of the terms and conditions by which the [utility] provides . . . the services covered by the tariff." *Brown v. MCI WorldCom Network Services, Inc.*, 277 F. 3d 1166, 1170 (9<sup>th</sup> Cir. 2002).

- 21 PacifiCorp also relies on the PSE REC sale proceeds docket to support the Company's position. PacifiCorp argues that in that case, PSE filed a petition for a deferred accounting with the Commission,<sup>19</sup> putting at issue how PSE's REC proceeds would be distributed and providing notice that the Commission could allocate REC sale proceeds other than through the usual ratemaking process where costs and benefits are matched to the same time period. Here, the Company maintains, no party filed such a petition, even though the settlement agreement that resolved PacifiCorp's 2009 rate case expressly reserved the right of any party to make such a filing, and accordingly the Commission's disposition of the Company's REC sale proceeds can only reasonably be established on a prospective basis.<sup>20</sup>
- 22 Staff, Public Counsel, and ICNU disagree, arguing that the fact that some REC sale proceeds had been included in rates does not mean that all REC sale proceeds were subsequently immune from further consideration. These parties assert that all costs incurred and revenues generated within the test year of 2009 should be used to calculate rates and credits, including actual REC sale proceeds. Even if that were not the case, these parties argue, the Commission should apply exceptions to the rule against retroactive ratemaking, including exceptions for extraordinary and unanticipated costs or revenues and for failure to disclose information pertinent to the rate setting process.

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<sup>17</sup> The rule against retroactive ratemaking is a corollary of the filed rate doctrine and provides that "once a rate is in place with ostensibly full legal effect and is not made provisional, it can then be changed only prospectively." *Columbia Gas Transmission Corp. v. Federal Energy Reg. Comm'n*, 895 F.2d 791, 797 (D.C. Cir. 1990). Retroactive ratemaking generally is improper because it makes adjustments to rates that have already been charged to customers.

<sup>18</sup> A collateral attack is an attempt to challenge a Commission decision in a proceeding other than the case in which the Commission rendered that decision. PacifiCorp contends that Staff and the Joint Parties collaterally attack the Commission's final orders in the 2008 and 2009 general rate cases by proposing to retroactively account for revenues that the Commission included in the rates it established in those cases.

<sup>19</sup> Deferred accounting is used "to track costs incurred by a regulated utility during one period with the possibility for inclusion in rates in a future period." *In re Petition of PacifiCorp for an Accounting Order Authorizing Deferral of Excess Net Power Costs*, Docket UE-020417, 3<sup>rd</sup> Supp. Order ¶ 24 (Sept. 27, 2002). Such a deferral is initiated by the filing what is termed a "deferred accounting petition."

<sup>20</sup> Essentially, PacifiCorp argues that the failure to file a simple piece of paper entitled "Deferred Accounting Petition" is the deciding factor in this case. *See* TR at 890.

- 23 The premise underlying virtually all of the parties' arguments is that REC sale proceeds are Company "revenues" to be factored into the ratemaking purposes.<sup>21</sup> We have not previously accepted that premise and do not accept it now. Rather, we have determined that RECs are comparable to utility property, and the sale of such property results in proceeds that, absent unusual circumstances, must be distributed in total to ratepayers.
- 24 When first presented with the issue of the proper disposition of REC sale proceeds in Docket UE-070725, we agreed with PSE's analogy of such transactions to the sale of utility property.<sup>22</sup> We continue to find that RECs, at a minimum, are comparable to utility property with respect to disposition of sale proceeds.<sup>23</sup> Utility property sale proceeds *may* be credited to customers through rates, as a portion of PSE's REC sale proceeds were distributed.<sup>24</sup> Such a distribution mechanism, however, does not make REC sale proceeds part of the general ratemaking process. RECs are assets akin to other commodities that can be stored for future use, held for future sale, or sold upon purchase or generation. As the production, acquisition, accumulation and eventual sale of such assets can transcend rate periods, we are not barred from examining the terms and conditions of sale just because the asset was sold during a prior rate period and even more to the point, because some portion of the asset was sold during a prior

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<sup>21</sup> Staff engages PacifiCorp on its ratemaking arguments but also recognizes that REC sales are comparable to utility property sales. *See, e.g.*, TR. at 924-26; Staff Post-Hearing Brief ¶ 51.

<sup>22</sup> PSE REC Order ¶¶ 40-41.

<sup>23</sup> RECs may be utility property within the meaning of Washington law. The legislature has broadly provided that "[n]o public service company shall **sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever**, which are necessary or useful in the performance of its duties to the public . . . without having secured from the commission an order authorizing it to do so." RCW 80.12.020(1) (emphasis added). The environmental attributes of the facilities PacifiCorp or any other electric utility uses to generate electricity are useful or necessary in the performance of its duties to the public to enable the utility to comply with its obligations under the state's EIA. But we need not, and do not, decide whether RECs are subject to the statutory transfer of property restrictions. We determine only that the proceeds from the sale of RECs are subject to the same disposition as the proceeds from the sale of utility property.

<sup>24</sup> *See 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 UE-070725, Order 06 (Oct. 26, 2010) (approving proposed distribution of REC sale proceeds, including using proceeds in excess of those provided to customers in the form of bill credits to offset rate base in future rate proceedings).

period and some of those proceeds included in rates. RECs thus are different than more conventional company revenues from off-system sales of electricity or electric and gas transmission capacity sales, which are assigned future costs and revenues for ratemaking purposes through the econometric modeling processes we have adopted.<sup>25</sup>

25 The Commission, therefore, must decide how to distribute the entirety of the *actual* proceeds from the sale of RECs or any other utility property, independent from setting rates. To the extent that the Commission approved, and customers have already received, credits or a rate reduction to reflect past sale proceeds, we agree that we should not revisit those credits or reductions. The Commission, however, still must determine the disposition of any difference between those previously distributed amounts and the total actual sale proceeds.

26 Applying these principles to the facts of this case, we determine that PacifiCorp must distribute to its customers the entirety of the actual proceeds from the Company's sale of RECs since January 1, 2009, attributable to its Washington operations, less the \$657,755 included in rates as a result of the settlement agreement the Commission approved in Docket UE-090205 and less the credits the Company has issued customers since April 3, 2011, in compliance with Order 06. Because these undistributed sale proceeds were never included in the Company's rates, PacifiCorp's arguments based on the filed rate doctrine, retroactive and single-issue ratemaking, and collateral attack on prior rate case decisions are inapplicable. As we decided for PSE in Docket UE-070725, PacifiCorp effectively retained these funds in trust for its customers pending Commission authorization for their disposition, which we are doing for the first time in this order and Order 06.

27 Although PacifiCorp's individual ratemaking arguments fall short of the mark, we nevertheless address the rationale underlying the Company's position. PacifiCorp essentially claims that it relied on the treatment of REC sales proceeds as part of the ratemaking process, and it would be unfair to require, without prior notice, that those proceeds must be credited to customers when the customers were already paying lower rates to account for REC sales as an offsetting source of Company revenue. Fairness, however, does not support PacifiCorp's position.

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<sup>25</sup> See, e.g., Order 06 ¶¶ 153-60 & 165-69 (resolving issues arising from modeling of PacifiCorp transmission capacity contract costs and proceeds from electricity sales to its east control area).

- 28 First and foremost, PacifiCorp's reliance on its treatment of REC sales proceeds is of the Company's own making. The Commission has never approved including such proceeds in the ratemaking process. The Commission did not even address that issue in its orders approving PacifiCorp's rates for 2009 and 2010. The scant reference to RECs in the 2009 rate case settlement, moreover, demonstrates that the parties did not even agree on the appropriate treatment of REC sales. The settling parties agreed only on the amount of the proceeds that would be considered to be included in rates should a party seek a Commission determination of how RECs would be treated. PacifiCorp's unilateral *assumption* that all of its REC sale proceeds were included in its rates is not a basis for reasonable reliance on the Company's own accounting.
- 29 Second, PacifiCorp cannot rely on the absence of a filing of a deferred accounting petition by Staff or another party as a legal basis to give the Company free access to REC revenues. PacifiCorp cites to the fact that PSE initiated the determination of its REC sale proceeds in Docket UE-070725 by filing such a petition. PSE's petition, however, did not trigger separate treatment of REC sale proceeds. The need for the Commission to determine the disposition of those proceeds arose upon the sale of those regulatory assets, not on PSE's filing. We ultimately authorized a deferred accounting mechanism for PSE as a means of accommodating the ongoing nature of REC sales, but the use of that mechanism did not somehow subsume RECs into the ratemaking process. To the contrary, the Commission's disposition of PSE's REC sale proceeds, both past and future, was fully consistent with the treatment of RECs as utility property for purposes of distributing those funds.<sup>26</sup>
- 30 PacifiCorp deprived itself of prior notice that the Commission could and would treat RECs as the equivalent of utility property. PacifiCorp's decision not to proactively seek a Commission determination of the distribution of REC sale proceeds does not shield the Company from its obligations to its customers or preclude the Commission from determining the proper disposition of those proceeds, even if the sales occurred in the past. Had PacifiCorp sold a generating plant or corporate office building that

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<sup>26</sup> See *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 UE-070725, Orders 03 & 06. Pursuant to these orders, only future proceeds were used to offset rate base. The past amounts were distributed to customers through a bill credit, used to fund low income energy efficiency programs, and retained by PSE to offset production tax credit overages and as a reward for its efforts to maximize sales proceeds.

was financed by ratepayers, the Commission would determine how the proceeds of that sale would be distributed, regardless of when the sale occurred. REC sales are no different.

31 Third, there are additional circumstances in this case that further undermine PacifiCorp's fairness claims. The Company's actual REC sales proceeds vastly exceed the amounts PacifiCorp estimated in its 2008 and 2009 rate case filings, in part because PacifiCorp did not include or disclose anticipated REC sale proceeds from lucrative contracts with California utilities that were pending approval by the California Public Utilities Commission.<sup>27</sup> We make no finding on the propriety of that conduct, but the evidence at least suggests that one reason PacifiCorp did not follow PSE's example in proactively seeking a Commission determination on how to distribute the Company's REC sales proceeds was that it was trying to avoid a Commission decision requiring PacifiCorp to credit to customers the substantial additional proceeds that the actual sales generated. That evidence also supports the other parties' arguments that they did not file a deferred accounting petition because they lacked sufficient information on the actual sales amounts, such information being entirely within PacifiCorp's control. Fairness under these circumstances dictates that the Commission determine how to distribute the millions of dollars in PacifiCorp's REC sales proceeds based on the nature of the RECs, rather than on whether the Company or another interested party previously filed a two-page document asking the Commission to do so.

32 Those circumstances also provide practical support for our legal and policy determination that RECs are equivalent to utility property for purposes of distributing the proceeds of their sale. As with any other commodity, the utility has control over when it will sell its RECs, providing both the incentive and the opportunity to generate more sales proceeds than the amounts included in Commission-approved rates if the Commission were to treat those proceeds as part of the ratemaking process. Again we emphasize that we make no finding that PacifiCorp engaged in such intentional manipulation. Requiring the Company to credit to customers all

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<sup>27</sup> Schoenbeck, Exh. No. DWS-14, ¶ 23. Public Counsel and ICNU filed a complaint in Docket UE-110070 alleging PacifiCorp intentionally misled them by failing to disclose the contracts during discovery or settlement negotiations in the 2009 rate case. That case, however, was dismissed for reasons not relevant to the disposition of this case.

actual REC sale proceeds, without regard to whether a deferred accounting petition is filed, precludes such gamesmanship.

- 33 Fourth, PacifiCorp complains that not being permitted to retain its actual REC sale proceeds would exacerbate the under earning of its rate of return in 2009 and 2010. Again, however, REC sale proceeds are not included in rates without express Commission authorization, and those funds may not be used to enhance Company earnings. PacifiCorp could have made, but did not make, the same type of filing PSE made to initiate Docket UE-070725 or otherwise request Commission action.
- 34 Finally, PacifiCorp claims that an additional \$576,254 should be deducted from the REC sale proceeds to be distributed to customers because that amount was included in the rates the Commission authorized when it approved the settlement in Docket UE-080220. We disagree. Our order approving the settlement agreement in that docket, including the settlement agreement itself, makes no reference to the inclusion of any REC sale proceeds in the resulting rates.
- 35 The Company nevertheless contends that REC sale proceeds necessarily were included in the final rates established by the settlement in Docket UE-080220 because PacifiCorp included an estimate of REC sale proceeds in its 2008 general rate case filing. We see no such necessary connection. The Commission approved a significantly smaller rate increase than PacifiCorp initially proposed, and we have no basis for determining which aspects of the Company's original case were included in the rates to which the parties agreed in their settlement. In the absence of express Commission authority to include REC sale proceeds in rates, we find that those proceeds were not included in the rates approved in Docket UE-080220.

### **C. Calculation of Historic REC Sale Proceeds.**

- 36 Having determined that Historic REC Sale Proceeds must be credited to customers, we must resolve disputes among the parties concerning the calculation of the amounts to be credited.

#### Allocation Methodology

- 37 The principal dispute is the amount of RECs allocated to Washington. PacifiCorp proposes to withhold RECs for compliance with Oregon and California renewable

portfolio standards (RPS) that are from WCA generation resources and then apply the WCA allocation method to determine Washington's share of the remaining RECs.<sup>28</sup> Staff and the Joint Parties, on the other hand, assert that Washington is entitled to its share of all RECs generated by ratepayer-funded resources before any of those RECs are used for RPS compliance. These parties argue that Washington ratepayers are paying for these WCA resources and should receive the benefits produced by them.

38 We agree with Staff and the Joint Parties. Washington ratepayers have funded their proportion of the Company's generation facilities that include the environmental attributes that give rise to RECs. Washington ratepayers, therefore, are entitled to the use of those RECs and any sale proceeds in the same proportion before they are used for RPS compliance in this or other jurisdictions in which PacifiCorp operates.

39 PacifiCorp offers no substantive opposition to the other parties' proposal. Rather, the Company argues that it has historically used its proposed methodology in the Quarterly REC Revenue Reports provided to Staff and the Joint Parties, as well as 2009 and 2010 Commission Basis Reports, without prior objection from the other parties.<sup>29</sup> PacifiCorp contends it would be unfair to retroactively adjust the REC allocation on which the parties previously agreed and the Company justifiably relied.

40 Conspicuously absent from PacifiCorp's argument is any reference to Commission approval of its allocation methodology. As with the disposition of the REC sale proceeds themselves, the Company's reliance on its own interpretation of its obligations, even with the acquiescence of other stakeholders, is not binding on the Commission.

41 We find that the methodology Staff proposed properly allocates RECs to Washington, and we adopt that methodology.

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<sup>28</sup> Under the WCA, the PacifiCorp's six state system is broken down into two units, the eastern and western control areas, based upon the location and functionality of resources used to serve the respective jurisdictions. Using the WCA, Washington is allocated approximately 22 percent of PacifiCorp's western region costs.

<sup>29</sup> Dalley, Exh. No. RBD-28CT 7:12-18.

Value of Withheld RECs

- 42 PacifiCorp did not sell the RECs it withheld for RPS compliance in other states, and accordingly Staff and the Joint Parties recommend that the Commission impute the value of Washington's share of those RECs into the credit that PacifiCorp must provide to its Washington customers. Staff calculates the imputation amount by multiplying the average price the Company received for each class of RECs sold in a calendar year by the percentage of available RECs that were sold during the year. Staff maintains it is reasonable to believe that PacifiCorp would have sold the same percentage of withheld RECs at the same price as the RECs it actually sold. PacifiCorp agrees with this aspect of Staff's calculations.
- 43 The Joint Parties, on the other hand, propose that the Commission impute the market value of the entirety of the withheld RECs, reasoning that "[u]sing a REC for compliance with RPS relies on that REC's value, in the same manner as a sale of that REC."<sup>30</sup> PacifiCorp responds that it is unrealistic to assume that the Company could have sold all of the withheld RECs.
- 44 We agree with the Joint Parties on this issue. We are not willing to make assumptions or speculate on what might have happened if PacifiCorp had attempted to sell the withheld RECs to a third party. As with the disposition of any utility property, we are concerned with what the Company actually sold.<sup>31</sup> Here, PacifiCorp "withheld" certain RECs for its own RPS compliance in Oregon and California, but the Company "sold" other RECs to third parties for their RPS compliance in those same states. This variation in treatment reflects a distinction without a difference for purposes of calculating sales proceeds. PacifiCorp effectively "sold" Washington RECs to its operations in other states. Washington ratepayers are entitled to the value of such REC usage.
- 45 Accordingly, the market value of each class of all the withheld RECs attributable to Washington must be imputed and included in the amount to be credited to the Company's Washington customers.

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<sup>30</sup> Public Counsel Phase II Opening Brief ¶ 62.

<sup>31</sup> We hasten to add, however, that we are not faced with a situation in which the Company negligently or intentionally failed or declined to sell RECs it could have sold. We leave for future determination the appropriate imputation, if any, of a sales figure in such circumstances.

Accrual

- 46 Staff and the Joint Parties also disagree on when creditable REC sales accrue. Staff proposes that the Company credit to customers the proceeds of all sales consummated after January 1, 2009. The Joint Parties recommend that only those sales for which the RECs were generated after January 1, 2009, should be included because for ratemaking purposes, value attributable to periods outside the test year should be removed.
- 47 We agree with Staff's position on this issue. As discussed above, RECs are not part of the ratemaking process, and accordingly there is no test period restriction on when value is created. Rather, as with utility property sales, we consider only when the asset was sold and the proceeds booked. All REC sales booked within a calendar year should be included in the credit for that year.

Inclusion of All RECs

- 48 Staff calculated the REC sales proceeds that should be allocated to Washington to include RECs PacifiCorp withheld for RPS compliance in other states but excluded RECs that do not currently have a market.<sup>32</sup> While strongly disagreeing with the use of this allocation, PacifiCorp contends that Staff should apply its methodology to all RECs, not just to RECs the Company withheld for RPS compliance in other states.
- 49 While we agree with PacifiCorp that Washington customer's share of Company RECs applies to all RECs, not just to those that are marketable, we are concerned that combining different types of RECs prior to allocating them to the states in which PacifiCorp operates would improperly dilute the value of those shares. Accordingly, we will require that the Company include all RECs when determining RECs allocated to Washington, but PacifiCorp must account separately for each type of REC. For example, the Company must separately determine Washington customers' share of hydro RECs, low impact hydro RECs, and wind RECs. Staff's calculations effectively reflect these determinations, and we approve those calculations for purposes of this order.

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<sup>32</sup> Breda, Exh. No. KHB-7TC 8:10-15.

Inclusion of All Non-Eligible RECs

50 PacifiCorp proposes to adjust both Staff's and the Joint Parties' imputation calculations to include all non-eligible RECs. Staff does not respond to the Company proposal, but the Joint Parties agree it is appropriate. So do we, and PacifiCorp's proposed corrections should be incorporated accordingly.

**D. Credit Mechanism**

51 We concluded in Order 06 that we would determine in this phase of the proceeding the appropriate mechanism for tracking and crediting REC sale proceeds. We required PacifiCorp to provide a proposal and permitted the other parties to comment or make their own proposal.

Party Proposals

52 PacifiCorp asks the Commission to modify Order 06 to allow the Company to base the annual true-ups on a calendar year starting in 2012.<sup>33</sup> Staff is silent on this request while Joint Parties endorse it.<sup>34</sup> The Company proposes to submit a full accounting of REC sale proceeds actually received from April 1, 2011 through December 31, 2011.<sup>35</sup> In each subsequent year, the accounting of actual REC sale proceeds would be provided for the full calendar year.<sup>36</sup> The Company also proposes to provide an estimate of the REC sale proceeds it expects to receive for calendar year 2012.<sup>37</sup> In each subsequent year, PacifiCorp would provide an estimate for that calendar year.<sup>38</sup> The Company proposes to accrue interest on any positive or negative balance in the tracking account at the Company's authorized weighted average cost of capital (WACC). On May 1 of each year, the Company would file an advice letter with the

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<sup>33</sup> Dalley, Exh. No. RBD-25T 6:21-24.

<sup>34</sup> Schoenbeck, Exh. No. DWS-5CT 8:5-7.

<sup>35</sup> Dalley, Exh. No. RBD-25T 6:27-28. PacifiCorp proposed to make this submission by May 1, 2012, but has yet to do so.

<sup>36</sup> Dalley, Exh. No. RBD-25T 7:1-2.

<sup>37</sup> Dalley, Exh. No. RBD-25T 7:3-4. PacifiCorp proposed to provide this estimate by May 1, 2012, but has yet to do so.

<sup>38</sup> Dalley, Exh. No. RBD-25T 7:4-5.

Commission to adjust the credit in the tariff schedule (Renewable Energy Revenue Adjustment - Schedule 95), if necessary.<sup>39</sup>

53 For Washington's allocation of REC revenues, the Company's tracking mechanism would treat RECs from Washington non-eligible resources in the same manner as it treats RECs from Washington RPS-eligible resources. It proposes to forecast the total generation and RECs from Washington RPS-eligible resources and apply Washington's cost allocation generation-west (CAGW) allocation factor to the forecasted generation. The tracking mechanism then would subtract RECs needed for the Washington RPS requirements.<sup>40</sup> To ensure compliance with the Washington's RPS when the number of RPS-eligible RECs allocated to Washington by the Revised Protocol<sup>41</sup> is insufficient to ensure compliance with the RPS, the Company would make a below-the-line purchase for the difference between the Washington RPS compliance requirement and the Washington eligible RECs allocated to Washington using the Revised Protocol.<sup>42</sup> If the Washington RPS requirement is less than the Washington allocated RPS-eligible RECs using the CAGW then the revenues from "pseudo excess" RECs would be credited to the tracking account. To determine the revenues for these "pseudo excess" RECs, the number of "pseudo excess" RECs is multiplied by the average selling price and by the percentage of all RECs sold in that year.

54 The Joint Parties propose that unsold RECs from a previous year be credited to customers through the tracking mechanism in the year in which they are sold.<sup>43</sup> To obtain the data necessary to implement its proposal, Joint Parties propose that the Company's annual filings include all REC activity for the reporting year including the generation of RECs, REC sales by vintage, and any changes in the number of RECs

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<sup>39</sup> Dalley, Exh. No. RBD-25T 7:10-12.

<sup>40</sup> Dalley, Exh. No. RBD-25T 8:17-20.

<sup>41</sup> PacifiCorp's Revised Protocol is the method by which its total system costs are allocated among the participating states. Six states are served by PacifiCorp, and, of those, Oregon, Utah, Wyoming and Idaho have adopted the Revised Protocol. The Commission rejected the Revised Protocol concluding that the resources used to serve Washington were best represented by the WCA allocation methodology.

<sup>42</sup> Dalley, Exh. No. RBD-25T 9:3-6.

<sup>43</sup> Schoenbeck, Exh. No. DWS-5CT 6:17-20.

held for RPS compliance by resource.<sup>44</sup> Joint Parties agree with all other aspects of the Company's proposed tracking mechanism except for using the Company's forecast of REC sale proceeds to reset the Schedule 95 tariff rate.<sup>45</sup>

55 They propose the credit reflected in the rate be based on the amount that is remaining in the tracking account at the end of the calendar year.<sup>46</sup> Joint Parties reason that by implementing this approach they seek to prevent a situation similar to that addressed in Docket UE-091703, *i.e.*, accumulating a cash balance in an interest-bearing account that ultimately must be recovered from customers based on actual amounts already booked in the preceding year.<sup>47</sup> Joint Parties expressly agree with including in the tracking account the Company's "pseudo" REC calculation.<sup>48</sup>

56 Staff advocates two changes to the Company's proposed tracking mechanism. First, the amount subject to the credit should be based on actual REC revenues rather than projections or forecasts.<sup>49</sup> Staff provides examples of the Company's estimates of REC sales and the actual sales for 2009 and 2010 to argue that projections are not reliable.<sup>50</sup> Second, Staff recommends the tariff rate remain the same until the balancing account is exhausted, or until ongoing REC sales indicate a different credit rate is appropriate.<sup>51</sup>

#### Commission Decision

57 We do not adopt any party's proposal, nor are we willing to craft one of our own. Rather, we will require the parties to develop an appropriate credit mechanism based on the guidance we provide in this order.

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<sup>44</sup> Schoenbeck, Exh. No. DWS-5CT 6:20-23.

<sup>45</sup> Schoenbeck, Exh. No. DWS-5CT 8:4-13.

<sup>46</sup> Schoenbeck, Exh. No. DWS-5CT 8:15-20.

<sup>47</sup> Schoenbeck, Exh. No. DWS-5CT 8:16-20 (citing *WUTC v. Puget Sound Energy*, Docket UE-091703, Order 02 (June 24, 2010)).

<sup>48</sup> Schoenbeck, Exh. No. DWS-5CT 8:5-8.

<sup>49</sup> Breda, Exh. No. KHB-7T 10:12-15.

<sup>50</sup> Breda, Exh. No. KHB-7T 10:19-11:8.

<sup>51</sup> Breda, Exh. No. KHB-7T 10:12-15.

- 58 We agree with Staff and the Joint Parties that the credits received by customers should be for the actual REC sales proceeds, rather than forecasted amounts with a true-up. Given the volatility in the REC market and wide disparity between PacifiCorp's past estimates and actual sales proceeds, we find that basing credits on actual sales amounts eliminates undue complexity, the opportunity for disputes over the accuracy of Company forecasts, and customer confusion with swings in the credit amount.
- 59 We also agree with PacifiCorp that credits should be calculated on a calendar year accrual basis and that Staff and the Joint Parties' proposals for protracting credits over several years, while evening out sales volatility, would impose an unnecessary burden on the Company with little, if any, corresponding benefit to customers. In addition, we are mindful that the parties in Docket UE-070725 were able to negotiate an agreed distribution of PSE's past and future REC sales proceeds once the Commission provided appropriate guidance.
- 60 Accordingly, we will require the parties to negotiate an appropriate mechanism for crediting historic and future REC sales proceeds to PacifiCorp customers consistent with the requirements of this order and fulfillment of our fundamental goal that "REC benefits should go to all of [the Company's] retail ratepayers because they are the ones burdened with the responsibility of paying rates sufficient for the Company to recover all of the costs of the resources that generate the RECs, including a reasonable return on the Company's investment."<sup>52</sup> Within 90 days of the date of this order, the parties must file either an agreed credit mechanism or individual proposals with documentation sufficient to describe the proposal and how it complies with this order and Commission objectives.

### FINDINGS OF FACT

- 61 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusion upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

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<sup>52</sup> Order 06 ¶ 199.

- 62 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and account of public service companies, including electrical companies.
- 63 (2) PacifiCorp provides electric service to customers in Washington.
- 64 (3) PacifiCorp receives proceeds from the sale of Renewable Energy Credits, which are intangible assets that represent the right to claim the environmental attributes of a renewable generation facility associated with electricity generated from that facility.
- 65 (4) The actual proceeds from the sale of Renewable Energy Credits should be returned to ratepayers in the form of a credit on each customer's bill.

### **CONCLUSIONS OF LAW**

66 Having discussed above all matters material to this decision, and having state detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 67 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 68 (2) 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 use in Title 80 RCW. PacifiCorp is engaged in the business of supplying utility services and commodities to the public for compensation in Washington.
- 69 (3) PacifiCorp's ratepayers pay the cost of the facilities that generate Renewable Energy Credits and are entitled to the proceeds from the sale of those Renewable Energy Credits.

- 70 (4) Renewable Energy Credits are comparable to, and should be treated the same as, utility property with respect to disposition of sale proceeds.
- 71 (5) PacifiCorp should be required to distribute to its customers the entirety of the actual proceeds from the Company's sale of Renewable Energy Credits on or after January 1, 2009, attributable to its Washington operations, less the \$657,755 included in rates as a result of the settlement agreement the Commission approved in Docket UE-090205 and less the credits PacifiCorp provided to customers since April 3, 2011, in compliance with Order 06.
- 72 (6) The parties should be required to negotiate an appropriate credit mechanism for distributing actual historic and future REC sale proceeds to PacifiCorp's customers and to present either an agreed mechanism or individual proposals for Commission determination.
- 73 (7) The Commission should retain jurisdiction over the subject matter and parties to this proceeding to effectuate the terms of this Order.

**ORDER**

**THE COMMISSION ORDERS:**

- 74 (1) PacifiCorp must credit to its customers the Company's total Renewable Energy Credits sale proceeds on or after January 1, 2009, through December 31, 2011, attributable to Washington under the West Control Area methodology, less the \$657,755 included in rates as a result of the settlement agreement the Commission approved in Docket UE-090205 and less the credits PacifiCorp provided to customers beginning April 3, 2011, pursuant to Order 06. Within 30 days of the date of this order, PacifiCorp shall make a compliance filing that calculates those total sales proceeds consistent with the requirements of this order.
- 75 (2) Within 90 days of the date of this order, the parties must file either an agreed mechanism for crediting historic and future Renewable Energy Credits sales proceeds to PacifiCorp's customers, or individual proposals for such a

mechanism accompanied by supporting documentation demonstrating how the proposal complies with this order and Commission objectives.

- 76 (3) The Commission retains jurisdiction over the subject matter and parties to this proceeding to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective August 23, 2012.

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**JEFFREY D. GOLTZ, Chairman**

**PATRICK J. OSHIE, Commissioner**

**NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.**