

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

vs.

PACIFICORP d.b.a. PACIFIC POWER &  
LIGHT COMPANY,

Respondent.

**DOCKET UE-100749**

**PETITION FOR STAY OF ORDER 10**

**I. INTRODUCTION**

1 Pursuant to RCW 34.05.467 and WAC 480-07-860, PacifiCorp d.b.a. Pacific Power & Light Company (PacifiCorp or the Company) respectfully petitions the Washington Utilities and Transportation Commission (Commission) for an order staying the effectiveness of Order 10 entered on August 23, 2012, in this proceeding (Order 10). The Company requests a stay pending resolution of PacifiCorp's concurrently filed Petition for Reconsideration and Motion to Reopen Record (Petition). If the Commission denies the Petition, the Company requests a stay pending resolution of the Company's petition for judicial review.

**II. ARGUMENT**

2 The Commission has previously found that it may grant a stay of a final order to preserve the status quo when a party seeks reconsideration or review of a Commission decision.<sup>1</sup> In addition, the Commission has found that the fact that a stay does not operate to the prejudice of any party supports a finding that a stay is appropriate.<sup>2</sup>

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<sup>1</sup> *Re Determining the Proper Carrier Classification of and Complaint for Penalties against Boubacar Zida*, Docket TV-091498, Order 04 ¶ 2 (July 23, 2010).

<sup>2</sup> *Wash. Utils. & Transp. Comm'n v. Int'l Pac., Inc.*, Docket UT-911482, 6<sup>th</sup> Supp. Order (Nov. 22, 1993).

3           PacifiCorp has filed a petition for reconsideration of Order 10 and will file a petition for  
judicial review under the Washington Administrative Procedure Act if the Commission denies  
reconsideration. PacifiCorp believes it has a strong likelihood of prevailing on the merits of such  
an appeal. Granting a stay is appropriate in this case because it will preserve the status quo,  
result in administrative efficiencies, and cause no prejudice to any party nor harm to customers.

4           First, granting a stay will preserve the status quo, which is important to avoid prejudice to  
the Company in this case. The Commission and Washington courts have not directly addressed  
whether the Commission has the authority to order surcharges (*i.e.*, reverse credits previously  
ordered) when reviewing an order on remand from a successful petition for judicial review.  
Therefore, to ensure that PacifiCorp's rights are preserved if the Company's petition for judicial  
review is successful, the Commission should stay the order, during which time the Company will  
retain the REC revenues in a regulatory liability account to be distributed to customers or  
retained by the Company depending on the outcome of the case.

5           Second, customers will not be harmed by the requested stay. Pending review of  
Order 10, the Company will record the REC revenues subject to the order in a regulatory liability  
account. Therefore, if Order 10 is upheld and the credit mechanism is established, customers  
will not be harmed because the revenues at issue will be accounted for in the interim and credited  
to customers.

6           Third, staying the order will result in administrative efficiencies. Order 10 requires the  
parties to enter into negotiations to establish "an appropriate mechanism for crediting historic  
and future REC sales proceeds to PacifiCorp customers consistent with the requirements of [the  
Order] . . ."<sup>3</sup> If the parties are unable to reach agreement on the mechanism, Order 10 requires

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<sup>3</sup> Order 10 ¶ 60.

each party to file individual proposals, with supporting documentation.<sup>4</sup> Compliance with this aspect of Order 10 will require the outlay of substantial time and resources by all parties, including the Commission. Indeed, in the Puget Sound Energy, Inc. (PSE) case, this process took nearly five months from the time the Commission issued its initial order regarding REC revenues to the time the Commission approved a mechanism implementing that decision.<sup>5</sup>

7           Given the complexity of Order 10, it is likely that the implementation process in this case will be at least as protracted as the process in the PSE case. It is inefficient to require the parties to engage in this lengthy and burdensome process when Order 10 is subject to petitions for reconsideration and judicial review or both, the disposition of which could obviate or materially change the implementation process. For similar reasons, PacifiCorp requests that the Commission also stay the requirement that the Company file, within 30 days, a “compliance filing that calculates [the REC] sales proceeds consistent with the requirements of [the Order.]”<sup>6</sup>

8           A balance of harms analysis strongly favors granting a stay: without a stay, all parties will incur substantial costs to carry out Order 10’s directives for implementation—costs that may be wasted depending upon the outcome on appeal. By contrast, no party would be harmed by a stay because the Commission will retain its current jurisdiction over the practices and amounts at issue.

9           Finally, a stay would prevent the inequity that will result if the Company prevails on judicial review but has already credited customers for REC revenues. Under the circumstances of this case, due to passage of time and customer migration, it will be impossible to recover the

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<sup>4</sup> *Id.* ¶ 60.

<sup>5</sup> *Id.* ¶ 59; *Re 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 (May 20, 2010); *Re 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).

<sup>6</sup> Order ¶ 74.

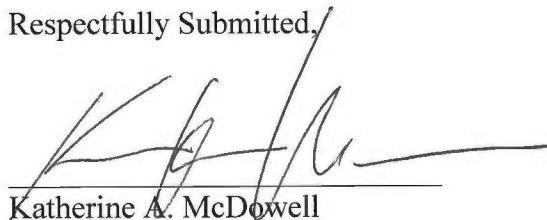
revenue credits from the customers who received them if the Company prevails on appeal. This inequity will be avoided if the Commission approves a stay.

### III. CONCLUSION

10 For the reasons stated above, PacifiCorp requests that the Commission grant PacifiCorp's Motion for Stay and stay the effectiveness of Order 10 pending resolution of PacifiCorp's Petition for Reconsideration and Motion to Reopen Record and, as applicable, PacifiCorp's petition for judicial review.

DATED: September 4, 2012.

Respectfully Submitted,



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