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September 26, 2012

VIA ELECTRONIC FILING & ABC LMI
David Danner
Executive Director & Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Pk. Dr. S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Re: WUTC v. PacifiCorp D/B/A Pacific Power & Light Company
Docket No. UE-100749

Dear Mr. Danner:

Enclosed please find the original and seventeen (17) copies of Public Counsel's Answer to PacifiCorp's Petition for Reconsideration, Petition for Stay of Order 10, and Motion to Reopen Record, for filing in the above mentioned docket.

Sincerely,

Simon J. ffitch
Senior Assistant Attorney General
Public Counsel Division
(206) 389-2055

SJf:cjw
Enclosures

cc: Service List (E-mail & First Class Mail)

CERTIFICATE OF SERVICE
Docket No. UE-100749

I hereby certify that a true and correct copy of Public Counsel's Answer to PacifiCorp's Petition for Reconsideration, Petition for Stay of Order 10, and Motion to Reopen Record were sent to each of the parties of record shown on the attached Service List in sealed envelopes, via:

First Class Mail and Electronic Mail

SERVICE LIST UE-100749

**** = Receive Highly Confidential; * = Receive Confidential; NC = Receive Non-Confidential**

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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PACIFICORP D/B/A PACIFIC POWER & LIGHT COMPANY, Respondent.	DOCKET NO. UE-100749 PUBLIC COUNSEL'S ANSWER TO PACIFICORP'S PETITION FOR RECONSIDERATION, PETITION FOR STAY OF ORDER 10, AND MOTION TO REOPEN RECORD

I. INTRODUCTION

1. Pursuant to the Commission's Notice of Opportunity to File Answer (dated September 5, 2012), the Public Counsel Section of the Washington Attorney General's Office (Public Counsel) files this Answer to PacifiCorp's Petition of Reconsideration, Motion to Reopen Record, and Petition For Stay of Order 10.

2. As discussed below, the Commission should deny the Petition for Reconsideration because it does not present sufficient grounds under the applicable standard. The Commission should also reject PacifiCorp's Motion to Reopen Record because the Company has not presented essential evidence that was not reasonably discoverable at the time of the hearing, nor has it provided any other good or sufficient reason to reopen the record.[1] Finally, the Commission should deny PacifiCorp's Petition For Stay of Order 10 because the Company has

[1] *See* Wash. Admin. Code § 480-07-830.

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not shown significant hardship absent a stay or a substantial possibility that Order 10 will be modified, nor is there a great risk of damage from interim application of the Order.[2]

II. PETITION FOR RECONSIDERATION

A. Legal Standard.

3. A petition for reconsideration must "request that the Commission change the outcome with respect to one or more issues determined by the commission's final order" and "must clearly identify each portion of the challenged order that it contends is erroneous or incomplete."[3] The Commission has previously explained that petitions for reconsideration are not an appropriate means of rearguing or re-litigating previously-developed issues, nor is a petition warranted where a party simply disagrees with the final order:

> A petition for reconsideration is not a second opportunity to litigate issues which were fully developed prior to entry of the final order and which were discussed and decided in the final order. The mere fact that a party disagrees with a final order does not state a basis for reconsideration.[4]

4. The bulk of PacifiCorp's Petition is a restatement of arguments that the Company previously made. For example:

(1) The Company previously made the argument that returning 2009 and 2010 REC revenues to customers would eliminate its opportunity to earn its authorized rate of return. *See* PacifiCorp's Initial Post-Hearing Brief ¶ 50, and Order 10, ¶ 33.

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[2] *See WUTC v. PacifiCorp*, Docket No. UE-032065, Order 07, ¶¶ 7-10 (Nov. 10, 2004).

[3] Wash. Admin. Code § 480-07-850(1) and (2).

[4] *In re the Matter of the Application of Avista Corp. for Authority to Sell Its Interest in the Coal-Fired Centralia Power Plant,* Docket No. UE-991255 et al., Fourth Supp. Order, ¶ 40 (Apr. 21, 2000) (emphasis added and internal citations omitted) (hereinafter "*Centralia Order*"); *see also WUTC v. Olympic Pipe Line Co.*, Docket No. TO-011472, Eighth Supp. Order, ¶¶ 13, 15 (Mar. 29, 2002) (a petition will be denied where the petitioner points to no error of fact, and instead "continues to support the factual theories that it advanced at the hearing," where the petition "is merely a restatement of its position at hearing" and where the matter that petitioner seeks to have reconsidered "was contested; the Commission considered the Company's factual assertions at hearing; and the Commission declined to accept the Company's position as to certain of the facts"); *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-011163, Seventh Supp. Order, ¶¶ 18, 22-23 (Oct. 24, 2001) (finding that PSE failed to meet its burden of demonstrating a basis for reconsideration where it had not shown error in the final order or that the order was incomplete).

(2) PacifiCorp previously argued that returning all REC revenues would produce unfair, unreasonable, and insufficient rates and that the Commission failed to consider this. *See* PacifiCorp's Initial Post-Hearing Brief, ¶¶ 49-52.

(3) The Company already argued that Notice is required for "retroactive creation of a deferred liability." *See* PacifiCorp's Initial Post-Hearing Brief, ¶ 62. The Commission squarely addressed the issue of notice in Order 10, concluding that any lack of notice given to PacifiCorp was of the Company's own making. *See* Order 10, ¶ 30.

(4) PacifiCorp has already attacked ICNU/Public Counsel's proposal to impute the full value of retained RECs on the basis that it has never achieved a 100 percent sales level of REC sales. *See* PacifiCorp's Initial Post-Hearing Brief, ¶ 95, and PacifiCorp's Reply Brief, ¶¶ 57-63.

5. Moreover, all parties and the Commission have repeatedly addressed the application of the rule against retroactive ratemaking, the filed rate doctrine, and the prohibition on collateral attacks. The Commission should ignore PacifiCorp attempts to re-introduce these issues under the guise that they now apply to the Commission's "reclassification of REC revenues" For that reason, as well as the reasons discussed below, the Commission should deny PacifiCorp's request for reconsideration of Order 10.

B. The Commission's "Interpretation" And Application Of The PSE REC Order[5] Is Neither "New" Nor Erroneous.

1. Order 10 does not present a new interpretation of the PSE REC Order.

6. PacifiCorp premises much of its Petition on the assertion that the Commission's interpretation of the PSE Order is "new" and "novel"[6] PacifiCorp relies on this assertion to

[5] *Petition of Puget Sound Energy, Inc. For an Order Authorizing the Use of the Proceeds from the Sale of Renewable Energy Credits*, Docket No. UE-070725, Order 03 (PSE REC Order).
[6] Petition for Reconsideration, ¶¶ 8 and 10.

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reintroduce its arguments regarding retroactive ratemaking[7] and to re-argue that the PSE REC Order should only apply to PacifiCorp on a prospective basis.[8]

7. Contrary to PacifiCorp's assertions, the Commission's interpretation and application of the PSE REC Order in Order 10 is far from "new." The record in the PSE REC case contains numerous references to RECs as a type of property. In its initial petition (filed in 2007) and amended petition, PSE defined RECs as "intangible assets."[9] Again in its post-hearing brief, PSE itself "analogiz[ed] the sale of RECs to the sale of utility property" and acknowledged that the Commission was tasked with determining the proper disposition of property sales.[10]

8. Moreover, in the PSE REC case, the Commission stated that it applied "the principles from *Centralia*" regarding allocation of proceeds from the sale of utility assets.[11] In *Centralia*, the Commission applied the benefits and burdens test to determine the proper treatment of the gain of Avista's sale of its ownership share in the Centralia generating plant.[12] The Commission went on to state in that Order that RECs "are intangible assets" that can be "transferred from one owner to another,"[13] and that carbon financial instruments ("CFIs") "are intangible assets that are similar to RECs."[14] The Commission also based its determination of whether a portion of PSE's

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[7] *Id.* at ¶ 26-34.
[8] *Id.* at ¶ 10.
[9] *Petition of Puget Sound Energy, Inc. For an Order Authorizing the Use of the Proceeds from the Sale of Renewable Energy Credits*, Docket No. UE-070725, PSE *Petition,* ¶ 4 (Apr. 13, 2007); and, *Amended Petition*, ¶ 4 (Oct. 8, 2009).
[10] *PSE REC Order*, ¶ 40, citing PSE's Post-Hearing Brief. Public Counsel witness, Scott Norwood, also defined RECs as assets, i.e., property. *See* Direct Testimony of Scott Norwood on Behalf of Public Counsel, Exh. No. SN-1T, 9:3-19 (Jan. 28, 2010).
[11] *PSE REC Order*, ¶¶ 41 and 47.
[12] *In the Matter of the Application of Avista Corporation for a Ruling on the Regulatory Treatment of the Gain on the Proposed Sale of the 2.5% Share of the Centralia Power Plant*, Docket No. UE-000080, Order Approving Sale and Distribution of Gain, ¶¶ 32-33 (March 22, 2000).
[13] *PSE REC Order*, ¶¶ 13-14.
[14] *Id.* at ¶ 18.

REC sales revenues should be retained by shareholders on a long discussion of treatment of utility property sales.[15]

2. Order 10 does not erroneously interpret the PSE REC Order.

9. PacifiCorp argues that the PSE REC Order *only* adopted the "benefits and burdens" test and that this test is nothing more than a restatement of the matching principle (which governs the proper timing of operating cost and revenue recognition).[16] PacifiCorp is wrong on both counts.

10. PacifiCorp mischaracterizes the "benefits and burdens" test as a restatement of the matching principle. In fact, application of the "benefits and burdens" test to determine the proper disposition of property sale gains has been "widely accepted by regulatory commissions and by courts, so much so that the case citation is often not referenced."[17] This can be seen in the "landmark case" setting out the test—*Democratic Central Committee v. Washington Metropolitan Transit Commission.*[18] In *Democratic Central Committee*, the Court concluded that when a utility sells property for a gain, the allocation of that gain should be guided by the principles that reward follows risk and "benefit follows economic burden."[19] The Court applied the "benefits and burdens" test to determine that the gain from the sale of property by a regulated transit company should be entirely allocated to ratepayers.[20] At no time did the Court liken this test to the matching principle or other principles related to timing of operating cost and revenue recognition.

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[15] *Id.* at ¶¶ 39-42.
[16] Petition for Reconsideration, ¶ 6 ("Indeed, this principle is essentially a restatement of the matching principle, which the Commission routinely applies to require the matching of costs and revenues in general ratemaking…").
[17] *Centralia Order*, ¶ 185 (Commissioner Hemstad concurring in part and dissenting in part).
[18] *Id.* at ¶ 183 (Commissioner Hemstad concurring in part and dissenting in part) (internal citation omitted).
[19] 485 F.2d 786, 808 (D.C. Cir. 1973), *cert denied* 415 U.S. 935 (1973).
[20] *Id.* at 821(Commissioner Hemstad concurring in part and dissenting in part).

11. Thus, in the PSE REC Order, the Commission was not applying a matching principle to REC sales revenues, but was instead applying the central test commissions use when addressing utility property sales.

C. The Commission's Treatment Of REC Sales As A Type Of Property Sale Is Not Erroneous.

12. The Commission has supported a "broad, inclusive"[21] reading of its property disposition statute, RCW 80.12.020. For example, the Commission determined in 1999 that exchanges of stock transferring ownership of public utilities required approval. The Commission noted that the statute's broad language "encompasses transfers of title..., transfers of rights to possess..., and transfers of any designed right or set of rights..." and requires approval "not just for some narrow class of transactions, but for *any transfer of rights* or control over *anything* necessary or useful to a public service company's utility operations."[22]

13. To this end, the Commission has on a number of occasions found as a matter of law that SO_2 emission allowances – analogous to RECs and CFIs in many respects – "*are property* within the meaning of chapter 80.12 RCW and RCW 80.12.020."[23] PacifiCorp, itself, previously petitioned the Commission for authority to sell SO_2 emission allowances under RCW 80.12.020. In its order granting PacifiCorp's petition, the Commission declared as a matter of law that

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[21] *In the Matter of the Application of PacifiCorp and Scottish Power PLC for an Order (1) Disclaiming Jurisdiction or, in the Alternative, Authorizing the Acquisition of Control of PacifiCorp by Scottish Power and (2) Affirming Compliance with RCW 80.08.040 for PacifiCorp's Issuance of Stock in Connection with the Transaction*, Docket No. UE-981627, Second Supp. Order, p. 12 (March 16, 1999).

[22] *Id.* (emphasis added).

[23] *In the Matter of the Petition of the Washington Water Power Company Seeking Blanket Authorization to Sell and Lease Sulfur Dioxide Emission Allowances and Seeking an Associated Accounting Order*, Docket No. UE-961156, Decision and Order Granting Authorization. *See also Petition of Puget Sound Energy, Inc. for an Order Regarding the Authorization to Sell Sulfur Dioxide Emission Allowances and an Associated Accounting Order,* Docket No. UE-001157, Final Order, p. 2 (Feb. 12, 1997) (emphasis added).

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"Sulfur dioxide emissions allowances … *are property* within the meaning of chapter 80.12 RCW and RCW 80.12.020."[24]

14. RECs have also been well-recognized as a form of property in academic literature and state rules and decisions. "Property rights… enable the legally recognized transfer of control of the [REC] credits."[25] If rights were not assigned, "the regulator and the utility…could not be sure that the portfolio standard was being met"[26] and "owners of renewable generation equipment could not be sure of their ability to capture the revenues from the production of eligible energy."[27] Several state statutes[28] and commission decisions[29] also describe RECs as a form of property.

15. Consistent with this interpretation of RECs as a form of property, utility companies in other states have sought commission authorization of transactions involving RECs. For example, pursuant to an Oregon statute requiring regulatory approval of property sales,[30] Portland General

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[24] *In the Matter of the Petition of PacifiCorp Seeking Blanket Authorization for the Sale of Surplus Sulfur Dioxide Emission Allowances*, Docket No. UE-940466, Decision and Order Granting Authorization, p. 3 (Apr. 13, 1994) (emphasis added).

[25] David Berry, "The Market for Tradable Renewable Energy Credits," 42 Ecological Econ. 369, 372 (2002).

[26] *Id.*

[27] *Id.*

[28] *See e.g.,* Fla. Admin. Code Ann. § 25-17.280 ("renewable energy credits…shall remain the exclusive property of the…generating facility"); *In the Matter of Investigation of Net Metering*, Docket No. E-100, 2009 N.C. PUC LEXIS 460 ("energy and the associated RECs are the private property of the customer-generator" (citing N.C. Gen. Stat. § 62-133.8(i)(7)).

[29] *See e.g., Petition of Southwestern Public Service Company for Declaratory Order Interpreting Commission Subst. R. § 25.173 Implementing Public Utility Regulatory Act § 39.904*, Docket No. 29815, 2005 Tex. PUC LEXIS 6. (March 16, 2005) (agreeing with party's argument that "payment for RECs is a payment for a new and distinct form of property, a form of property unbundled from and separate from the electricity being purchased"); *In the Matter of the Proposed Rules Implementing Renewable Energy Standards 4 CCR 723-3,* Docket No. 05R-112E, 2006 Colo. PUC LEXIS 67 (January 7, 2006) (describing REC as "legitimate property interest").

[30] Or. Rev. Stat. § 757.480; *Compare* Or. Rev. Stat. § 757.480 ("A public utility doing business in Oregon shall not, without first obtaining the Public Utility Commission's approval of such transaction…sell, lease, assign or otherwise dispose of the whole of the property of such public utility…") with Wash. Rev. Code § 80.12.020 ("No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities…without having secured from the commission an order authorizing it so to do…").

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Electric Company (PGE) filed for authorization to sell renewable energy credits in 2007.[31] In response to PGE's filing, the Oregon Public Utility Commission "established the sale of RECs as a property sale [.]"[32] Similarly, Idaho Power Company sought authority to retire its Green Tags from the Idaho Public Utilities Commission in 2008.[33] Most notably, PacifiCorp itself sought commission approval in Oregon for sale of RECs under that state's property disposition statute. The Company proposed to record REC sales revenues in its property sales balancing account for refund to customers with interest, which the Oregon commission approved.[34]

D. Order 10 Does Not Erroneously "Reclassify" REC Revenues, Nor Does It Improperly Change Previous Commission Accounting Treatment Of Such Revenues.

1. The Commission did not erroneously "reclassify" PacifiCorp's REC revenues in Order 10.

16. PacifiCorp implies that the Commission previously "classified" REC revenues as operating revenue because the Commission previously accepted rate case and results of operations filings that included REC revenues recorded in Account 456, Other Electric Revenues.[35] PacifiCorp goes on to discuss that the Commission "accepted" similar rate treatment for Avista's REC revenues.[36] PacifiCorp is incorrect on both points.

17. PacifiCorp first states that the Commission initially accepted its treatment of RECs in its 2006 general rate case.[37] However, as PacifiCorp itself concedes, no party raised REC issues in

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[31] *In the Matter of Portland General Electric Application for Approval to Sell Tradable Renewable Energy Credits,* Order 07-083. 2007 Ore. PUC LEXIS 70 (March 7, 2007).
[32] *Id.*
[33] *In the Matter of the Application of Idaho Power Company for Authority to Retire its Green Tags*, Case No. IPC-E-08-24, Order 30720 (Jan. 23, 2009).
[34] *In the Matter of PacifiCorp d/b/a Pacific Power Application Requesting Approval of Sale of Renewable Energy Credits*, Docket No. UP 260, Application of Pacific Power, p. 3 (Apr. 8, 2010).
[35] Petition for Reconsideration, ¶¶ 18-25.
[36] *Id.* at ¶ 25.
[37] *Id.* at ¶ 21.

that case, nor did the Commission consider RECs in its Order in that case.[38] The Company goes on to argue that the Commission's approval of subsequent settlement agreements also stand for Commission approval of its treatment of REC revenues in those cases, but fails to note the limited precedential nature of settlement agreements.[39] The Company also points to its results of operations reports. These, however, also fail to support its argument that the Commission has expressly approved its previous treatment of REC revenues since there are no determinations made on such reports.[40] In sum, PacifiCorp's argument is based not on any actual classification made by the Commission, nor on any specific finding or conclusion, but merely on PacifiCorp's own assumptions.

18. As the Commission pointed out in Order 06 in this docket, this case is only the second occasion upon which REC issues have been raised for determination.[41] In no previous PacifiCorp filing did the Commission consider and issue a determination regarding treatment of REC proceeds. Similarly, in the Avista rate case that the Company cites, the Commission has not yet had the opportunity to consider or address that Company's REC revenues, nor has it previously issued a determination on Avista's treatment of REC revenues.[42] PacifiCorp may not rely entirely on its own unilateral assumption of REC revenue classification when this issue was not before the Commission until now.

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[38] *See WUTC v. PacifiCorp*, Docket Nos. UE-061546 and UE-060817, Order 08 (June 21, 2007).
[39] Petition for Reconsideration, ¶ 22. *See e.g., WUTC v. PacifiCorp, d/b/a Pacific Power & Light*, Docket No. UE-080220, Order 05, Attachment (Settlement Stipulation), ¶ 33 (stating in part, "[b]y executing this Stipulation, no party shall be deemed to have approved, admitted or consented to the facts, principles, methods or theories employed in arriving at the terms of this Stipulation, nor shall any Party be deemed to have agreed that any provision of this Stipulation is appropriate for resolving issues in any other proceeding").
[40] *Id.* at ¶ 23.
[41] Order 06, ¶ 199.
[42] The Commission is currently reviewing the filing in Docket No. UE-120436 and no decision is expected until early 2013.

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2. Order 10 adheres to, rather than changes, prior Commission treatment of REC revenues and revenues from sales of similar intangible assets.

19. Contrary to PacifiCorp's assertion, the Commission is adhering to, rather than changing, its prior treatment of REC revenues. The Commission's *only* previous consideration of the appropriate accounting treatment for REC revenues was in the PSE REC Order. In Order 06 of this docket, the Commission stated that the PSE REC order "determined fundamentally that the REC benefits should go to … ratepayers."[43] The Commission went on to state that REC revenues "should be returned in the form of bill credits…."[44] Moreover, as discussed above, the Commission has long treated revenue from the sale of other similar intangible assets as revenue from property sales. Thus, contrary to PacifiCorp's claim, Order 10 follows, rather than changes, previous treatment of such revenues.

3. PacifiCorp's retroactive ratemaking arguments are misguided.

20. PacifiCorp relies on a number of previous Commission orders to argue that the Commission's "reclassification" of REC revenues – from operating revenue to revenue from the sale of utility property – amounts to retroactive ratemaking. As previously noted, Order 10 does not actually "reclassify" REC revenues. Regardless, even if this were the case, the orders that the Company relies on are off-point and do not support its arguments.

21. The Company first discusses a 1998 water utility case wherein the utility sought to include in rate base $5,110 of plant that it previously expensed, essentially seeking to obtain a second accounting treatment for a single amount.[45] This is not the situation here. Order 10 expressly only addresses *undistributed* REC revenues and specifically exempts from treatment

[43] Order 06, ¶ 199.
[44] *Id.* at ¶ 202.
[45] Petition for Reconsideration, ¶ 29 (discussing *WUTC v. Am. Water Resources, Inc.*, Docket No. UW-980072 et al., Fifth Supp. Order, p. 21 (Nov. 24, 1998).

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the $657,755 already included in rates.[46] The Company also relies on a 2001 PSE order wherein PSE sought to change a previously-ordered accounting treatment of its conservation incentive credit.[47] This order, too, is inapplicable, as it deals with a request to amend an accounting order and a tariff previously in effect for prior periods. Here, the Commission is not amending any previous order or tariff as it has not issued any decision regarding the rate treatment or appropriate distribution of PacifiCorp's *undistributed* REC revenues. Finally, neither of these orders deal with the sale of property or utility assets, or revenue from such sales. As the Commission points out, it may determine how proceeds of REC sales are distributed regardless of when the sale occurred.[48]

E. PacifiCorp Misinterprets The Basis For The Commission's Imputation Of Revenue For Withheld RECs.

22. PacifiCorp states in its Petition that the Commission based its imputation of revenue for withheld RECs on an assumption that the Company would or could have sold 100 percent of those RECs. In fact, the Commission did *not* base its determination for imputing REC revenues for withheld RECs on an assumption of what PacifiCorp would or could have done. Order 10 clearly states that the Commission was "not willing to make assumptions or speculate on what might have happened if PacifiCorp had attempted to sell the withheld RECs."[49] In reality, the Commission simply imputed the market value for RECs that the Company itself used for RPS compliance in other states.[50] Thus, the amount of RECs that PacifiCorp may have sold absent

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[46] Order 10, ¶ 74.
[47] Petition for Reconsideration, ¶ 30 (discussing *Re Application of Puget Sound Energy for Authorization Regarding the Deferral of the Net Impact of the Conservation Incentive Credit Program*, Docket No. UE-010410, Order Denying Petition to Amend (Nov. 9, 2001)).
[48] Order 10, ¶ 30.
[49] *Id.* at ¶ 44.
[50] *Id.*

withholding is irrelevant. Moreover, the Company already presented its argument regarding the percentage of possible REC sales in previous phases of this case.

III. MOTION TO REOPEN RECORD

23. The Commission may reopen the record to allow receipt of evidence that is "essential to a decision and that was unavailable and not reasonably discoverable with due diligence at the time of the hearing" or for "other good and sufficient cause."[51]

24. The new evidence offered by PacifiCorp is not essential to the Commission's decision, nor was it unavailable and reasonably undiscoverable at the time of the hearing. The new evidence offered by PacifiCorp consists only of a declaration of Andrea Kelley containing information previously available to the Company; and certain publicly filed documents which were readily obtainable at the time of the hearing. Moreover, contrary to PacifiCorp's argument, good and sufficient cause does not exist to reopen the record. In an effort to establish good cause, PacifiCorp argues that Order 10 newly raises the issue of whether REC revenues maybe treated like gains on the sale of utility property. As already discussed, however, multiple parties drew comparisons between the sale of RECs and the sale of other utility property. Public Counsel raised in the opening of its brief that returning REC revenues to customers is consistent with the treatment given to SO_2 emissions credits (which the Commission has treated as property), and with Washington State Supreme Court precedent that a utility cannot fail to return proceeds from the sale of a rate-payer funded *asset*.[52] Likewise, Staff raised this issue in its Post-Hearing Brief, comparing treatment of REC sales revenues to the sale of utility assets such

[51] Wash. Admin. Code § 480-07-830.
[52] Public Counsel Opening Brief, ¶ 2.

as a building and pointing out that the Commission had previously concluded that RECs are "intangible assets." [53]

IV. PETITION FOR STAY

25. Public Counsel concurs with the recommendations which we understand will be filed by Commission Staff and ICNU that PacifiCorp's request for stay of Order 10 be denied. PacifiCorp has not demonstrated that irreparable harm will result if Order 10 is not stayed, nor has it shown that reconsideration will "almost certainly be granted."[54] The Commission has already considered a fully developed record and reached a decision and should not "postpone indefinitely the satisfaction of [its] statutory responsibilities."[55]

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[53] Staff Post-Hearing Brief, ¶51 (quoting *Re Amended Petition of Puget Sound Energy, Inc.,* Docket No. UE-070725, Order 03). Notably, PacifiCorp incorrectly states in n.16 of its Petition for Reconsideration, that Staff did *not* cite the PSE REC Order, when in fact Staff cited and quoted that Order.
[54] *WUTC v. Sno-King Garbage Co., Inc.*, Docket No. TG-900657, Fifth Supp. Order, p. 1.
[55] *See WUTC v. PacifiCorp,* Docket No. UE-032065, Order 07, ¶¶ 7-10.

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V. CONCLUSION

26. For the reasons set forth above, Public Counsel respectfully requests that the Commission deny the Petition for Reconsideration of PacifiCorp. Public Counsel also requests that the Commission deny PacifiCorp's Motion to Reopen Record and its Petition For Stay or Order 10.

27. DATED this 25th day of September.

ROBERT M. McKENNA
Attorney General

Simon J. ffitch
Senior Assistant Attorney General
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