

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET UE-100749
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 11
)	
v.)	
)	ORDER DENYING PETITION FOR
PACIFICORP D/B/A PACIFIC)	RECONSIDERATION, MOTION TO
POWER & LIGHT COMPANY,)	REOPEN RECORD, AND
)	PETITION FOR STAY
Respondent.)	
)	
.....)	

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 in that order 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 On August 23, 2012, the Commission entered Order 10, Order Establishing Disposition of Proceeds from the Sale of RECs (Order 10). Order 10 requires PacifiCorp to credit to its customers the proceeds from the sale of all RECs 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.

- 3 On September 4, 2012, PacifiCorp filed a Petition for Reconsideration and Motion to Reopen Record (Reconsideration Petition) and a Petition for Stay of Order 10 (Stay Petition). The Reconsideration Petition alleges the following errors in Order 10:

- Order 10 spurns years of Commission decisions strictly applying the law against retroactive ratemaking by exempting renewable energy credit (REC) revenues from this law and from general ratemaking, ignoring the fact that PacifiCorp has reflected REC revenues in all of its rate filings in Washington since the Energy Independence Act (EIA) was enacted in 2006.
- Order 10 incorrectly interpreted and applied [the] rationale expressed in other orders to conclude that REC revenues are akin to gains from the sale of utility property. This conclusion ignores the fact that the rationale for returning gains on the sale of utility property to customers—that customers have paid depreciation expense and a return on the property—does not apply to REC revenues.
- Order 10 adopts more punitive rate treatment for PacifiCorp’s REC revenues than the Commission has adopted for other Washington utilities. Specifically, the Commission allowed Puget Sound Energy, Inc. (PSE) to retain a portion of its REC revenues and allowed Avista Corporation, d/b/a Avista Utilities (Avista) to include REC revenues as operating revenues in Avista’s Energy Recovery Mechanism (ERM). The Commission has never ordered Avista to provide a separate REC revenue rate credit to its customers.
- Order 10 combines different features of the parties’ competing proposals to devise the most extreme and punitive approach possible to hypothesize the amount of PacifiCorp’s actual and imputed REC revenues, including the assumption—contrary to the evidence in the record—that PacifiCorp can sell 100 percent of its RECs.
- Order 10 ensures that PacifiCorp will have no opportunity to earn its allowed rate of return in the rate effective period and ignores the fact that PacifiCorp significantly under-earned in 2009 and 2010, even taking into consideration all historical REC revenues. Order 10 effectively eviscerates most of the rate increase allowed in this case and further reduces PacifiCorp’s earnings by several percentage points. The Commission refused to consider any of these facts, abdicating its

responsibility to ensure that PacifiCorp's rates are fair, just and reasonable, and sufficient to maintain PacifiCorp's financial integrity.¹

In its Stay Petition, the Company contends that a stay will preserve the status quo, will not harm consumers, will result in administrative efficiencies, and will prevent inequity if PacifiCorp prevails on appeal but has already credited its REC sale proceeds to customers.

- 4 On September 26, 2012, Commission Staff (Staff), the Public Counsel Section of the Washington Attorney General's Office (Public Counsel), and the Industrial Customers of Northwest Utilities (ICNU) each filed Answers to the Reconsideration Petition and Stay Petition. These parties all oppose PacifiCorp's petitions except that Staff supports the Company's request to reconsider how to calculate the value of RECs attributable to Washington that were withheld for regulatory compliance in other states. PacifiCorp filed its Reply to these Answers on October 10, 2012.

DISCUSSION AND DECISION

A. Order 10 Correctly Interprets and Applies the PSE REC Order.

- 5 PacifiCorp first contends that Order 10 is erroneous because its determination that RECs are comparable to utility property for purposes of distributing sale proceeds is based on a new interpretation of Order 03 in Docket UE-070725 (PSE REC Order)² that is inconsistent with the plain language of that order and the Commission's prior interpretation. Staff, Public Counsel, and ICNU all disagree. So do we.
- 6 As an initial matter, Staff correctly observes that the determination in Order 10 that proceeds from the sale of RECs, like utility property, should be distributed to ratepayers, is based on the Commission's independent analysis of the nature of RECs. The result of that analysis is consistent not just with the PSE REC Order but more significantly with the definition of RECs in RCW 18.285.030(17) and the federal Environmental Protection Agency (EPA) characterization of RECs as a form of

¹ Reconsideration Petition ¶ 1.

² *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).

property.³ The Commission thus did not rely on the PSE REC Order as binding precedent but as yet another indication that the Commission, the legislature, and the EPA all have the same view of RECs as property.

7 Nor does Order 10 misinterpret the PSE REC Order. The Company claims the Commission in the PSE REC Order “simply adopted a ‘benefits and burdens’ test, which is not unique to property transactions, and applied this test to allow PSE to retain a portion of its REC revenues.”⁴ PacifiCorp incorrectly characterizes the Commission’s analysis.

8 The Commission applied a “benefits and burdens” review in the PSE REC case *because* it determined that RECs are comparable to utility property. PSE analogized RECs to utility property and contended that “[i]n determining the proper allocation of gains realized from the sale of utility property, ‘the Commission relies on the broad principle that reward should follow risk and benefit should follow burden.’”⁵ We agreed this provided useful guidance in determining how to distribute REC sale proceeds. We further relied on the Commission discussion of those principles in a prior docket distributing the gain from the sale of the Centralia power plant, a utility property case.⁶ Accordingly, the Commission conducted a “benefits and burdens” review of PSE’s REC sales as if they were utility property sales. That is precisely how we characterized the PSE REC Order in Order 10.

9 PacifiCorp further maintains that Order 10 conflicts with Order 06, which “never described the PSE REC Order as finding that RECs were analogous to property.”⁷ Rather, according to PacifiCorp, Order 06 initiated a new phase to determine disposition of REC sale proceeds “in the ‘test, post-test and rate’ periods in this case – even though the Commission now asserts that its resolution of the PSE REC Order made the issue of ratemaking test periods irrelevant to the disposition of REC

³ Environmental Protection Agency, Green Power Partnership, Renewable Energy Certificates (RECs), <http://www.epa.gov/greenpower/gpmarket/rec.htm> (EPA Green Power Website).

⁴ Reconsideration Petition ¶ 6.

⁵ PSE REC Order ¶ 40.

⁶ *Id.* ¶ 41.

⁷ Reconsideration Petition ¶ 7.

revenues.”⁸ The Company misconstrues Order 06. We stated in that order our “adher[ance] in this proceeding to the basic principles discussed in [the PSE REC Order] that require the proceeds derived from the sale of RECs to be returned to customers.”⁹ The reference to the “test, post-test, and rate periods” merely described the relevant time period for the REC sales at issue in this docket. Order 10 is fully consistent with Order 06.

10 PacifiCorp also professes surprise that the Commission determined that RECs are comparable to utility property when no party took that position.¹⁰ Such an argument is disingenuous at best. Staff not only raised the possibility at oral argument, but PSE proposed that very determination in the REC petition that company filed in 2007 and the Commission accepted in its 2010 PSE REC Order. The Public Utility Commission of Oregon, moreover, has interpreted that state’s transfer of property statute, which has language identical to RCW 80.12.020, to apply to RECs and required PacifiCorp to seek approval of its sale of Oregon RECs as utility property.¹¹ PacifiCorp has no basis on which to claim that the Commission’s decision to treat RECs like utility property when determining the proper disposition of sale proceeds is beyond reasonable expectations.

11 The Company further claims, “[t]he Commission lacks authority to arbitrarily declare a matter properly within its ratemaking jurisdiction as one ‘outside of the general ratemaking process’ and therefore exempt from the Commission’s ‘long-established and judicially recognized rate-making principles.’”¹² PacifiCorp attempts to meld the concepts of “ratemaking jurisdiction” with “ratemaking process.” Of course, the Commission has jurisdiction to determine disposition of REC sales proceeds, just as it

⁸ *Id.* (quoting Order 06 ¶ 203).

⁹ Order 06 ¶ 202.

¹⁰ PacifiCorp specifically claims that “If the PSE REC Order meant what the Commission now claims it means, surely the parties in this case would have understood and argued that interpretation.” Reconsideration Petition ¶ 8. As a practical matter, however, the Commission must independently weigh the facts and interpret the law and is neither responsible for, nor bound by, the arguments the parties make or do not make to support their respective positions.

¹¹ *See In re Application of PacifiCorp Requesting Approval of Sale of Renewable Energy Credits*, Public Utility Commission of Oregon Order 10-201 (June 9, 2010) (cited and discussed in Staff Response ¶ 27).

¹² *Id.* ¶ 9.

has authority over all revenues and expenses of the companies whose rates it regulates. However, not all of a company's revenues and expenses are included in the ratemaking formula for the purpose of setting a base rate. Disposition of the gain from utility property sales is one example of revenue that is not part of the ratemaking formula. Many storm expenses similarly are excluded from base rates. PacifiCorp's argument incorrectly assumes that REC sale proceeds are necessarily included in the standard ratemaking framework. As we explained in Order 10 and discuss further below,¹³ the Commission has never so determined.

- 12 Finally, PacifiCorp argues that the Commission's decision in the PSE REC Order was one of first impression and thus should be applied to PacifiCorp on a prospective basis only. As discussed above, the Commission's determinations in Order 10 are not based just on the PSE REC Order, but on the nature of RECs. Had PacifiCorp sold a generating plant in 2009, the Company would not be entitled to retain the proceeds from that sale simply because it unilaterally accounted for those proceeds as operating revenue for the last three years. Nor does that result change because PacifiCorp did not previously know the Commission's interpretation of the nature of RECs. PSE found it reasonably foreseeable in 2007 that RECs are analogous to utility property and filed a petition with the Commission to confirm that determination. PacifiCorp, for whatever reason, did not take the same procedural course that could have led to certainty early on. Instead, the Company opted to leave the disposition of the REC sale proceeds to subsequent Commission decision. PacifiCorp's dissatisfaction with the outcome of the option it chose provides no basis on which to modify that decision.

B. RECs Are Comparable to Utility Property

- 13 PacifiCorp claims that the Commission erred in Order 10 by concluding that RECs are comparable to utility property with respect to the disposition of sale proceeds. The Company argues that Washington's Energy Independence Act (EIA) supports PacifiCorp's view that "revenues from the sale of RECs should be treated like revenues from the wholesale sale of electricity and used to offset corresponding net power cost expense."¹⁴ We continue to disagree.

¹³ *E.g.*, Order 10 ¶ 28.

¹⁴ Reconsideration Petition ¶ 11.

14 The plain language of the EIA precludes PacifiCorp’s argument. That statute defines RECs as

a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by freshwater. The certificate includes *all of the nonpower attributes* associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.¹⁵

The statute defines “nonpower attributes” as

all environmentally related *characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes*, that are associated with the generation of electricity from a renewable resource, including but not limited to the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.¹⁶

15 The statute does not bifurcate electric production into electricity and RECs as PacifiCorp maintains. RECs, by statutory definition, are completely separate from all “electrical power service attributes” and are the physical characteristics of the facilities “that are associated with the generation of electricity,”¹⁷ not a co-production of that generation. Thus the EIA does not support the Company’s argument that “RECs are created in tandem with the electricity produced by renewable resources and cannot be created without the generation of electricity.”¹⁸ To the contrary, the defined characteristics of RECs – including the generating facility’s “geographic location, vintage, [and] qualification as an eligible renewable resource” – are not

¹⁵ RCW 19.285.030(19) (emphasis added).

¹⁶ RCW 19.285.030(14) (emphasis added).

¹⁷ *Id.* (emphasis added).

¹⁸ Reconsideration Petition ¶ 13.

created with the electricity produced and are the attributes of property, not generated electricity.¹⁹

- 16 PacifiCorp also maintains that RECs are comparable to electricity because they “are not included in rate base or otherwise treated as utility property for ratemaking purposes. Specifically, customers do not pay depreciation expense or a rate base return related to RECs, in contrast to utility property in rate base.”²⁰ The Company expands on this argument in its Reply, maintaining that RECs cannot be considered utility property under RCW 80.12.020 because they are not included in rate base and WAC 480-143-180(4) excludes such items from the statutory definition of utility property.
- 17 The lack of depreciation or rate of return does not change the fundamental nature of RECs as derived from, and comparable to, utility property. We stated in Order 10, moreover, that “we need not, and do not, decide whether RECs are subject to the statutory transfer of property restrictions.”²¹ We continue to maintain that position.²² Regardless of whether RECs come within the definition of “utility property” in RCW 80.12.020, they are a form of property,²³ and as *derived* from the facility generating the electricity rather than *produced* by it, RECs are sufficiently analogous to utility

¹⁹ PacifiCorp thus is incorrect when it states in paragraph 13 of its Reply that “the Commission’s order, which focuses on the generation plant and not on the production, is irreconcilable with the Washington law.” As Staff correctly observes, “While it is true that RECs are *quantified* by the electrical output of a renewable facility, RECs only have value because of the renewable facilities that give rise to them.” Staff Response ¶ 23.

²⁰ Reconsideration Petition ¶ 15.

²¹ Order 10 n.23.

²² We nevertheless observe that the issue remains open. RECs derive their value from the rate base facilities that are used to generate the electricity with which RECs are associated, and no Commission order excludes RECs from rate base, rendering WAC 480-143-180 potentially inapplicable.

²³ “Property” is generally defined “to denote everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value.” Black’s Law Dictionary 1095 (5th ed. 1979). PacifiCorp accords undue significance to the occasional use of the word “commodity” in Order 10 to refer to RECs. The order uses that word according to its most common meaning, *i.e.*, “something used or valued,” Webster’s Third New International Dictionary 458 (1976), not in a technical economic sense or as an indication of the nature of RECs.

property that the proceeds of REC sales are comparable to, and should be distributed according to the same principles as, the proceeds from the sale of utility property.

18 Finally, the Company takes issue with the Commission’s observation in Order 10 that unlike off-system sales of electricity, RECs “can be stored for future use, held for future sale, or sold upon purchase or generation.”²⁴ PacifiCorp contends that renewable portfolio standards “typically restrict the banking and storage of RECs,” and thus “sales of ‘vintage or stored RECs are extremely limited in volume and price.” The Company concludes, “The simple fact that RECs can be banked under the EIA for brief periods is not a principled distinction between the power and nonpower attributes of the electricity and does not justify making one component subject to normal ratemaking principles and the other exempt from them.”²⁵

19 We did not err in Order 10 in considering the nature of REC sales to be one factor in our determination that RECs are comparable to utility property. The limited duration in which RECs have market value does not alter our finding that the Company’s ability to store and sell RECs well after the electricity with which the REC is associated has been generated distinguishes REC sales from the off-system sale of the electricity itself, which must occur immediately upon generation. Whether PacifiCorp sells RECs one day, one month, or one year after the associated electricity is generated, RECs are fundamentally different than the electricity, and Order 10 does not err by treating them accordingly.

C. Order 10 Did Not Retroactively Reclassify REC Sale Proceeds.

20 PacifiCorp takes issue with the finding in Order 10 that the Commission never approved including REC sale proceeds in the ratemaking process. The Company asserts that this finding is contrary to the facts and that PacifiCorp “has always accounted for its REC revenues in Washington rates as operating revenue recorded to Account 456, Other Electric Revenues.”²⁶

21 PacifiCorp fails to identify any Commission order that acknowledged, much less approved, such accounting. Rather, the Company takes the position that the

²⁴ Order 10 ¶ 24.

²⁵ Reconsideration Petition ¶ 17.

²⁶ Reconsideration Petition ¶ 20.

Commission “accepted” PacifiCorp’s accounting by establishing rates in the fully litigated general rate case in Docket UE-061546 in which the Company included REC sales proceeds in Account 456 for the first time. Yet the record in that docket is devoid of any reference to REC sale proceeds, including in the PacifiCorp exhibits that quantify Account 456.²⁷ The Company does not offer, nor is the Commission aware of, any authority for the proposition that by establishing rates, the Commission is deemed to have approved the accounting treatment of a specific regulatory asset without any knowledge of the existence of that asset or how a company has accounted for it.

22 PacifiCorp’s remaining arguments follow from its false predicate. The Company contends that in compliance with the Commission rule requiring consistency in adjustments in general rate case filings,²⁸ PacifiCorp included REC sale proceeds in Account 456 in Dockets UE-080220, UE-090205, and UE-100749 without challenge. The Commission, however, resolved the first two of those dockets by an order approving settlement agreements without any consideration of the proper accounting of REC sale proceeds,²⁹ and the third docket is the proceeding currently before the Commission. PacifiCorp’s filings in these dockets do not in any way undermine the finding in Order 10 that the Commission has never approved including PacifiCorp’s REC sale proceeds in the ratemaking process.

23 PacifiCorp also cites five Commission basis reports the Company filed detailing annual results of operations, all of which reflect REC sale proceeds as other electric revenue recorded to Account 456. These reports, however, are not part of the

²⁷ See *WUTC v. PacifiCorp*, Docket UE-061546, Exhs. PMW-4 & PMW-7. In addition to relevant excerpts of these exhibits, Exhibit A to the Declaration of Andrea L. Kelly filed with PacifiCorp’s Reconsideration Petition in this docket includes a document breaking out “REC Revenue” from the remainder of the items in Account 456. This document is not part of the record in Docket UE-061546, and as discussed below, the Commission denies the Company’s request to include that document in the record. PacifiCorp offers no evidence to demonstrate that the Commission was aware that REC sale proceeds were included in the Account 456 figures presented in that docket.

²⁸ WAC 480-07-510(3)(e).

²⁹ The Company observes that the Commission approved a stipulation in the 2009 rate case that specified the amount of REC sale proceeds included in the rates to which the parties agreed, but nothing in that stipulation or the Commission order approving it made any reference to the accounting of those proceeds, much less accepted or approved any accounting treatment.

ratemaking process. Nor were any of these reports ever presented to the Commission for approval or consideration in an open meeting, adjudication, or other formal proceeding. Staff reviews such reports to remain informed of company operations, not to analyze company accounting practices. Again, PacifiCorp's Commission basis reports provide no indication that the Commission accepted or approved the Company's accounting treatment of REC sale proceeds.

24 PacifiCorp culminates its recitation of past filings by stating that the “[t]he theory underlying this argument – that the Company could make nine major regulatory filings over five years and treat a revenue item in a manner unacceptable to the Commission – is inconsistent with the role of the Commission to ‘conduct[] a careful audit and review [of the Company’s test year operations] prior to authorizing any change in rates.’”³⁰ The Commission takes seriously an accusation that it is not fulfilling its statutory responsibilities and expects such accusations to be supported by substantial evidence. The facts here do not support the Company's allegation. To the contrary, the evidence produced in this docket demonstrates that PacifiCorp has concealed or vastly underestimated the amount of its REC sale proceeds and seeks to profit from that conduct by retaining millions of dollars that rightfully belong, and have always belonged, to its ratepayers. The Company's discontent arises from the Commission properly exercising its regulatory obligations, not shirking them.

25 PacifiCorp further contends that the Commission accepted Avista's inclusion of REC sale proceeds in Account 456 and has never ordered Avista to provide a separate credit for RECs. PacifiCorp purports to support this contention by citing to testimony that Avista filed in Dockets UE-120436 and UG-120437, that company's current rate case, but the Commission has not yet rendered any decision in that case. As should be abundantly clear from Order 10 and the discussion in this order, the fact that a utility unilaterally accords a particular accounting treatment to REC sale proceeds is not equivalent to Commission acceptance or approval of such accounting. The Commission has made no determination on the disposition of Avista's REC sale

³⁰ Reconsideration Petition ¶ 24 (quoting *WUTC v. Avista*, Dockets UE-090134, *et al.*, Order 10 n.38 (Dec. 22, 2009)).

proceeds, so PacifiCorp has no basis for any claim of disparate or discriminatory treatment of REC sale proceeds.³¹

- 26 The Company nevertheless maintains that “the Commission cannot avoid application of fundamental ratemaking principles by retroactively reclassifying operating revenue as the equivalent of rate base and then asserting that this rate base equivalent was never in rates.”³² Again, this argument relies on the false premise that the Commission classified REC sale proceeds as operating revenue and is now *reclassifying* those proceeds as comparable to utility property.
- 27 The Commission has never classified, or authorized PacifiCorp to classify, REC sale proceeds as operating revenue. With the exception of the amounts specified in the stipulation in Docket UE-090205, the Commission has never expressly or knowingly authorized PacifiCorp to include REC sale proceeds in the Company’s rates or as part of the ratemaking process. The Commission cannot “reclassify” a regulatory asset that the Commission did not classify. Rather, the Commission upon being called upon for the first time to determine how to distribute REC sale proceeds, is simply recognizing the nature of RECs and ratepayers’ entitlement to the proceeds from the sale of those intangible utility assets.
- 28 Similarly unavailing is PacifiCorp’s argument that a properly noticed deferred accounting petition was required prior to the Commission treating REC sale proceeds as comparable to utility property. Those proceeds were not properly accounted for in the Company’s rates or ratemaking process and thus no deferred accounting was warranted. Nor did the Commission deprive PacifiCorp of any notice due before the Commission determined the nature and treatment of REC sales. As we explained in

³¹ PacifiCorp claims in its Reply that “in past cases, Avista also included REC revenues in rate case filings as Renewable Energy Credit Sales in Account 456, the same as PacifiCorp.” Reply ¶ 17. In those cases, however, Avista made pro forma adjustments to *remove* those sale proceeds from its revenue figures. *WUTC v. Avista*, Docket UE-080416, Exh. WGJ-2 at 2; *WUTC v. Avista*, Docket UE-090134, Exh. WGJ-2 at 2; *WUTC v. Avista*, Docket UE-100467, Exh. WGJ-2 at 2. The Commission takes administrative notice of these documents for purposes of this proceeding.

³² Reconsideration Petition ¶ 28.

Order 10, the Company had every opportunity to seek a Commission determination on those issues long before now but chose not to do so.³³

29 PacifiCorp raises the specter that as a result of Order 10, “unless the Commission explicitly approves rate treatment for each particular expense or revenue item, rates would be subject to backward-looking changes at the Commission’s discretion in the future, effectively eviscerating the rule against retroactive ratemaking and the filed rate doctrine.”³⁴ Such fears are groundless. RECs were a new asset created by the EIA. Unlike PSE, PacifiCorp declined to seek guidance from the Commission on the proper disposition of proceeds from the sale of that asset and unilaterally decided how it would account for these sales without identifying or explaining that accounting to the Commission. We believe these circumstances are unique and irrelevant to the principles of retroactive ratemaking or the filed rate doctrine.

D. Order 10 Correctly Requires PacifiCorp to Impute the Value of All RECs Attributable to Washington.

30 PacifiCorp complains that “Order 10 combines different features of the parties’ competing proposals to devise the most extreme and punitive approach possible to hypothecate the amount of PacifiCorp’s actual and imputed REC revenues.”³⁵ Specifically, the Company repeats its claim that there is no evidentiary support for assuming that PacifiCorp could have sold 100 percent of the Washington RECs it withheld for compliance in other states, and Order 10 errs by making that assumption. Staff agrees and recommends that the Commission grant reconsideration on this point, maintaining that “Staff’s calculation considered all RECs properly allocated to Washington and properly determined their value.”³⁶

31 The Commission’s determination of the imputed value of the Washington RECs the Company withheld was based on principle, not punishment, and we adhere to that principle. The Commission did not “assume” that PacifiCorp *would have sold* all of the Washington RECs if it had not withheld them for use in other states. Rather, we

³³ Order 10 ¶ 30.

³⁴ Reply ¶ 19.

³⁵ Reconsideration Petition ¶ 40.

³⁶ Staff Response ¶ 51.

found that the Company effectively *did sell* those RECs to its operations in California and Oregon.³⁷ If PacifiCorp had not used Washington RECs for compliance in those states, the Company would have had to purchase them from a third party. Order 10 correctly concluded that the value of those RECs belongs to Washington ratepayers.

E. Disposition of REC Sale Proceeds Is Unrelated to PacifiCorp's Rate of Return.

- 32 Finally, PacifiCorp alleges that Order 10 errs by failing to consider the impact of the Commission's decision on the Company's rates. The Commission must ensure that a company's rates are fair, just, reasonable, and sufficient, and PacifiCorp claims that the credits required by Order 10 will exacerbate the Company's under-earning in 2009 and 2010 resulting in rates that are legally insufficient. We disagree.
- 33 Again, PacifiCorp's arguments are based on the false premise that REC sale proceeds were properly included in the Company's rates. They were not. PacifiCorp, without Commission acceptance or authorization, unilaterally accounted for REC sale proceeds as operating revenues and proffers now that it used the millions of dollars in sales above the estimates included in rates to offset shortfalls in other aspects of Company operations and enhance its earnings. Those proceeds belonged to the ratepayers, and we continue to conclude that PacifiCorp is not entitled to use those ratepayer funds to increase the Company's realized rate of return.
- 34 The Commission's obligation is to ensure that the Company's *rates* are fair, just, reasonable, and sufficient, not to guarantee that PacifiCorp achieves its authorized rate of return by any available means. The Company took the calculated risk that it could account for and use REC sale proceeds as it chose without seeking Commission approval. PacifiCorp, not the Commission, is responsible for the financial impact on the Company of the Commission's determination that those proceeds must be credited to ratepayers.

F. The Motion to Reopen the Record and Stay Petition Should Be Denied.

- 35 PacifiCorp seeks to introduce additional evidence in the record in this proceeding. Specifically, the Company offers the Declaration of Andrea L. Kelly (Declaration)

³⁷ Order 10 ¶ 44.

and attached exhibits concerning the treatment of REC sales proceeds, which PacifiCorp contends is necessary to enable the Company to respond to new and unanticipated issues raised by Order 10. Staff, Public Counsel, and ICNU all oppose inclusion of this evidence, arguing that the proffered information is not relevant or necessary to the Commission's decision, and in some cases is improper.

36 We deny the motion. PacifiCorp's prior filings in other dockets are the best evidence of the extent to which treatment of REC sale proceeds has been before the Commission. The Commission thus will take administrative notice of the excerpts of the filings the Company has made in other dockets.³⁸ The remainder of the Declaration is irrelevant or argument, rather than evidence, and we will not include it in the record or otherwise consider it.

37 PacifiCorp also has petitioned to stay Order 10 pending judicial review if the Commission denies the Reconsideration Petition. The Company maintains that a stay would preserve the status quo, would not harm customers, would result in administrative efficiencies, and would prevent the inequity that will result if PacifiCorp prevails on judicial review but has already credited customers for REC sale proceeds. Staff, Public Counsel, and ICNU oppose a stay, stating that the Company has not satisfied the requirements for a stay, PacifiCorp will need to undertake most, if not all, of the requirements in Order 10 regardless of whether the Company prevails on appeal, and the request is premature because the Commission has yet to implement credits to ratepayers for historic REC sale proceeds.

38 We deny the Petition. Order 10 requires only that PacifiCorp calculate the amount of historic REC sale proceeds the Commission has required be credited to ratepayers and develop a mechanism, preferably in conjunction with the other parties, for crediting that amount.³⁹ The Commission has not yet determined when to implement the crediting mechanism. PacifiCorp thus will not suffer any harm or inequities in

³⁸ These excerpts are limited to the following: Exhibits PMW-4 and PMW-7 in Dockets UE-061546 & UE-060817 (Declaration, Exhibit A, pages 2-5); Exhibits RBD-4 in Docket UE-080220 and RBD-3 in Docket UE-090205 (Declaration, Exhibit B, pages 1-8); Commission Basis Reports in Dockets UE-080758, UE-090665, UE-100712, UE-110763, and UE-120601 (Declaration, Exhibit C, pages 2-18).

³⁹ We note that on October 31, 2012, PacifiCorp made a filing ostensibly in compliance with Order 10 calculating historic REC sale proceeds and providing a mechanism for crediting those proceeds to ratepayers. We will address that filing in a future order.

complying with Order 10. Even if the Commission determines not to require the Company to implement credits of historic REC sale proceeds until the conclusion of any judicial review, having a crediting mechanism in place when Order 10 is affirmed on appeal, as the Commission expects, will minimize the delay in providing customers with the credits to which they are entitled.

ORDER

THE COMMISSION ORDERS:

- 39 (1) PacifiCorp's Petition for Reconsideration and Motion to Reopen Record is DENIED.
- 40 (2) PacifiCorp's Petition for Stay of Order 10 is DENIED.
- 41 (3) The temporary suspension of the compliance filing deadlines in paragraphs 74 and 75 of Order 10 is lifted. PacifiCorp and the other parties shall make those filings within the time frames specified in those paragraphs measured from the date of this order.

Dated at Olympia, Washington, and effective November 30, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

Philip B. Jones, Commissioner, dissenting:

- 42 I am unable to join my colleagues in this decision. I did not sign, and refrained from dissenting from, Order 10 pending further briefing from the parties on the Company's inevitable request for consideration of whether RECs are comparable to utility property for the purposes of distributing sale proceeds. I remain unconvinced that the rationale on which the majority relies reflects the appropriate treatment for REC revenues.
- 43 RECs are inextricably linked with the electricity generated by EIA-eligible facilities. PacifiCorp has accounted for REC sales revenues under Account 456, Other Electric Revenue, along with off-system sales and other revenues associated with electricity generation that is not consumed by the Company's ratepayers. Avista uses the same accounting. Even the majority concedes that a portion of PacifiCorp's REC revenues were included in rates as a result of the settlement agreement in Docket UE-090205, which would not have been the case but for this accounting. Under these circumstances, PacifiCorp had a reasonable basis to consider REC revenues as part of the ratemaking process.
- 44 I nevertheless do not accept the Company's position in its entirety. PacifiCorp was entitled to reasonable notice that the Commission would consider separate treatment of REC revenues, but such notice is not limited to a deferred accounting petition. Here, Staff prefiled testimony of Michael Foisy on October 5, 2010, in which he proposed segregating REC revenues from rates for equitable distribution of those revenues to ratepayers based on our decision in the PSE REC Order.⁴⁰ PacifiCorp was on notice as of October 5, 2010, that distribution of its REC revenues was at issue in this docket, and accordingly, I would require the Company to issue credits to ratepayers for all REC revenues received after that date pursuant to the mechanism we established in Order 06.
- 45 Therefore, I respectfully dissent.

PHILIP B. JONES, Commissioner

⁴⁰ Foisy, Exh. No. MDF-1CT at 8-15.