MEMORANDUM

December 28, 2012

TO: Chairman Goltz
Commissioner Jones
Commissioner Oshie
David Danner
Mark Vasconi
Greg Kopta (w/attachments)
Sally Brown (w/attachments)
Marilyn Meehan
Tom Schooley
Deborah Reynolds

FROM: Lisa Wyse, Records Center

SUBJECT: PacifiCorp d/b/a Pacific Power & Light Company v. Washington Utilities and Transportation Commission, a Washington state agency (UE-100749)
Petition for Judicial Review of Agency Action

A Petition for Judicial Review of Agency Action has been filed in Thurston County Superior Court on December 28, 20, by Kari Vander Stoep, representing Petitioner listed above. The petition was received by the Commission on December 28, 2012.

Please contact the Records Center if you would like copies of the attachments.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

PACIFICORP d/b/a PACIFIC POWER & LIGHT COMPANY, Petitioner, v. WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, a Washington state agency, Respondent.	No. 12-2-02667-7 PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION

INTRODUCTION

Petitioner PacifiCorp d/b/a Pacific Power & Light Company ("PacifiCorp") seeks judicial review under the Washington Administrative Procedure Act ("APA"), chapter 34.05 RCW, of Orders 10 and 11 issued by the Washington Utilities and Transportation Commission ("WUTC") in its Docket UE-100749.

Orders 10 and 11 address the treatment of PacifiCorp's revenues from the sale of the renewable energy attributes (*i.e.*, the non-power portion) of energy production from renewable energy facilities. In these orders, the WUTC deliberately and illegally reclassified PacifiCorp's revenues from the sale of renewable energy attributes of energy

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production as comparable to the gains on the sale of utility property, despite the fact that the WUTC has issued multiple orders since 2006 approving rates for PacifiCorp that included these revenues as a credit to expenses (*i.e.*, operating revenues) and not as utility property. The WUTC then used this new classification as utility property to ignore longstanding precedent and established ratemaking principles to justify reaching back to 2009 and ordering PacifiCorp to credit customers for historical revenues in excess of the amounts already credited through approved rates. With this blatant disregard for established ratemaking principles and accounting sleight-of-hand, the WUTC obliterated PacifiCorp's equity return for the current rate period. The WUTC's actions are discriminatory, punitive, and illegal.

Most of the facts in this case are undisputed. The market for renewable energy attributes is largely a creature of state laws that differ from state to state. Except for voluntary programs offered by utilities, the market for renewable energy attributes exists in states that have a statutory or regulatory requirement (typically referred to as a renewable portfolio standard) for a utility to supply retail customers with a percentage of power from specified renewable energy facilities (*e.g.*, wind, solar, biomass facilities). These state requirements specify the type, location, and vintage of renewable energy production that qualifies for compliance with the state law. Whether renewable energy attributes can be used for compliance purposes as "renewable energy credits" or "renewable energy certificates" is dependent upon the terms of the applicable state law.

In Washington, the requirement and associated restrictions are specified by Washington's Energy Independence Act, chapter 19.285 RCW ("EIA"). The Washington law requires customers be served with minimum percentages of renewable energy during and after 2012. The renewable energy can be generated by the utility or purchased from a third party. Alternatively, the utility can satisfy the requirement by purchasing only the

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renewable energy attributes of production from a qualifying renewable energy facility. The EIA defines these qualifying renewable energy attributes as a renewable energy credit, often referred to as a "REC."[1] The Washington requirement limits qualifying RECs to electricity production from specified renewable energy facilities located in a geographically restricted area and produced after a specific date, all as detailed in the law. As emphasized in the dissent in Order 11, RECs are inextricably linked to electricity production. For example, the mere existence of a wind power project does not create a REC; the wind power project must be generating electricity to produce RECs.

The purchase and sale of the renewable energy attributes is a relatively recent activity, as are state renewable portfolio standards. In fact, the renewable portfolio requirements of Washington's EIA did not become effective until 2012. Given how new renewable portfolio standards are, and how many changes there have been in laws relating to renewable energy and greenhouse gas emissions, prices for renewable energy attributes have been highly volatile.

Even before Washington's EIA, PacifiCorp sold renewable energy attributes to other utilities that had to comply with renewable portfolio standards in other states or operated voluntary programs that allowed customers to purchase those attributes. Since 2006, PacifiCorp in its rate cases has credited Washington customers with Washington's share of projected revenues from these sales.

The WUTC sets rates for PacifiCorp's Washington customers through an adjudicative proceeding, known as a general rate case, where the WUTC reviews

[1] "Renewable energy attributes" also may be referred to generically as renewable energy certificates. To minimize confusion, PacifiCorp will only use the term "Washington REC" when referring specifically to renewable energy credits as defined by Washington's EIA and footnote 23 of Order 10, that is, attributes that can be used by a utility to comply with its obligations under Washington's EIA.

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extensive information about PacifiCorp's revenues and expenses, determines the appropriate estimated levels of revenues and expenses to include in customer rates, and determines PacifiCorp's authorized level of equity return. In addition to requiring extensive financial information for rate cases, the WUTC also requires PacifiCorp to file detailed annual reports of its revenues, expenses, and earnings.

The goal of utility ratemaking is to set rates that reflect the cost of serving the customer during the time the rates are in effect. Rates are required to be set prospectively. For every rate case, PacifiCorp estimates its costs of serving Washington customers; estimates its operating revenue from sales of electricity, renewable energy attributes, and other sources; and estimates the appropriate level of an equity return. The WUTC then sets rates based on these estimates. This is standard practice in utility rate cases. Naturally, the estimates are sometimes too high and sometimes too low, but the WUTC typically does not go back into past rate periods to change the estimates or true-up estimated revenues and expenses to match actual revenues and expenses. Instead, the WUTC would simply take a fresh look in the next rate case.

Since 2006, PacifiCorp, along with other similarly situated utilities in Washington, has consistently accounted for the revenue it received from selling renewable energy attributes as "other operating revenue." Similarly, PacifiCorp accounts for revenues from selling electricity at wholesale as "operating revenue." In multiple filings with the WUTC, PacifiCorp accounted for sales of renewable energy attributes in the same manner that it accounted for sales of electricity—as operating revenue. In every rate case filed since 2006, PacifiCorp included an estimate of renewable energy attribute sales revenues. In fact, in 2009, the WUTC approved a settlement between PacifiCorp and the other parties to the general rate case that explicitly included revenues from the sale of renewable energy attributes and treated those revenues as operating revenues. In all, PacifiCorp

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accounted for such revenues as operating revenues in at least nine different filings with the WUTC. Until the WUTC's Order 10 in this proceeding, PacifiCorp's treatment of revenues from the sale of renewable energy attributes went unquestioned.

But in August 2012, the WUTC abruptly and unilaterally changed course. In Order 10, it decided that revenues from the sale of renewable energy attributes should not be considered operating revenues and instead treated the revenues as if they were comparable to the gain on the sale of utility property (such as the sale of a physical generating plant). The WUTC changed its treatment of revenues from the sale of renewable energy attributes despite the fact that no party argued that it was improper for PacifiCorp to treat the revenues as operating revenues.

Although retroactive ratemaking is illegal, the WUTC decided to apply this change on a retroactive basis. The Commission asserted that gains from the sale of utility property are appropriately considered outside of normal ratemaking processes, and used its reclassification of renewable energy attribute revenues as utility property to pull revenues out of past rate periods (2009 and 2010) and credit them to customers. Not only did this violate the rule against retroactive ratemaking, but the Commission also misinterpreted Washington's EIA.

Even more egregious, the WUTC engaged in single-issue ratemaking and set rates that were insufficient because it selectively applied this retroactive treatment only to actual revenues that were higher than estimated, but did not apply the same standard to expenses that were higher than estimated. In essence, the WUTC decided that by changing the accounting treatment for revenues from the sale of renewable energy attributes, it was free to ignore its own ratemaking principles, to ignore longstanding precedent that strictly limits the WUTC's authority to change past rates, and to apply this new standard asymmetrically.

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Finally, the WUTC did not just take away actual revenues. It also took additional amounts based on its estimates of how much PacifiCorp could have been paid for renewable energy attributes that were not sold and produced no revenue at all.

As required by RCW 34.05.546, PacifiCorp respectfully states as follows:

NAME AND MAILING ADDRESS OF PETITIONER

1. PacifiCorp: PacifiCorp is a business providing utility service to the public in portions of Washington state and five other states. PacifiCorp is a "public service company" and an "electrical company" as those terms are used in Title 80 RCW. PacifiCorp is organized under the laws of Oregon and its corporate headquarters are located in Portland, Oregon. PacifiCorp's mailing address is:

825 NE Multnomah St., Suite 2000
Portland, OR 97232

NAME AND MAILING ADDRESS OF PETITIONER'S ATTORNEYS

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NAME AND MAILING ADDRESS OF THE AGENCY WHOSE ACTION IS AT ISSUE

3. WUTC. The Washington Utilities and Transportation Commission is an agency of the State of Washington established under chapter 80.01 RCW and charged by the legislature with the authority to regulate in the public interest the rates, services, facilities, and practices of businesses in the state supplying utility service to the public for compensation. The WUTC's mailing address is:

1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504

AGENCY ACTION AT ISSUE

4. On August 23, 2012, the WUTC entered Order 10 in Docket UE-100749, *Order Establishing Disposition of Proceeds from the Sale of Renewable Energy Credits.* On November 30, 2012, the WUTC entered Order 11, *Order Denying Petition for Reconsideration, Motion to Reopen Record, and Petition for Stay.* Orders 10 and 11 are attached as Exhibits 1 and 2, respectively, and are collectively referred to as the "Orders."

PERSONS WHO WERE PARTIES IN THE ADJUDICATIVE PROCEEDINGS

5. The following entities participated in the phase of the WUTC proceeding, Docket UE-100749, that led to the issuance of Orders 10 and 11:

PacifiCorp
Washington Utilities and Transportation Commission Staff
Public Counsel Section of the Office of the Attorney General
Industrial Customers of Northwest Utilities

6. The following entities participated in an earlier phase of Docket UE-100749, but not in the phase that led to the issuance of Orders 10 and 11:

Wal-Mart Stores, Inc. and Sam's West, Inc.
The Energy Project

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JURISDICTION AND VENUE

7. Jurisdiction. The Court has jurisdiction over this petition under the APA, RCW 34.05.510 *et seq.*

8. Venue. Venue is proper in Thurston County under RCW 34.05.514(1)(a).

9. Exhaustion of Administrative Remedies. On September 4, 2012, PacifiCorp submitted a Petition for Reconsideration and Motion to Reopen Record under RCW 34.05.470 and WAC 480-07-850 and a Petition for Stay of Order 10 under RCW 34.05.467 and WAC 480-07-860. In Order 11, the WUTC denied the Petition for Reconsideration and Motion to Reopen Record and Petition for Stay of Order 10 on November 30, 2012. PacifiCorp files this Petition for Judicial Review within the time limits of RCW 34.05.542(2) and RCW 34.05.470(3). As required by RCW 34.05.534 and RCW 34.05.554, PacifiCorp has exhausted its administrative remedies.

10. Standing. PacifiCorp is aggrieved and adversely affected by the WUTC's action. PacifiCorp has been substantially prejudiced by the Orders' requirement that PacifiCorp credit to its customers revenues from the sale of renewable energy attributes accrued from January 1, 2009, until April 2, 2011, in excess of the amounts already included in approved rates. PacifiCorp's interests were among those that the WUTC was required to consider. A judgment in favor of PacifiCorp would eliminate or redress the prejudice caused by the WUTC's action. PacifiCorp has standing to obtain judicial review as required by RCW 34.05.530.

FACTS DEMONSTRATING ENTITLEMENT TO REVIEW

11. PacifiCorp filed a general rate case with the WUTC on May 4, 2010, seeking to change rates effective April 2011. The WUTC assigned Docket UE-100749 to this matter, which proceeded in two phases. In the first phase, the WUTC issued Order 06

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on March 25, 2011,[2] resolving all issues except those related to revenues from historical sales of renewable energy attributes between January 2009 and April 2011. Order 06 required PacifiCorp to establish a mechanism to allocate these revenues to customers, in the form of bill credits, based upon an annual forecast, subject to true-up, beginning with forecast revenues for 2011. Order 06 directed PacifiCorp to file an accounting and allocation proposal for historical revenues from the sale of renewable energy attributes, which would commence Phase II of the docket.

12. WUTC rules require PacifiCorp to use the uniform system of accounts for electric utilities published by the Federal Energy Regulatory Commission ("FERC") in Title 18 of the Code of Federal Regulations, Part 101. WAC 480-100-203(1). "Any deviation from the uniform system of accounts, as prescribed by the FERC, will be accomplished only after due notice and order of [the WUTC]." WAC 480-100-203(3). Among the accounts prescribed by FERC's uniform system of accounts is Account 456, "Other electric revenues." 18 CFR Part 101, Income Accounts, Account 456.

13. Since 2006, in at least nine different filings with the WUTC, PacifiCorp accounted for revenues from the sale of renewable energy attributes, along with revenues from wholesale sales of electricity and other revenues, under Account 456. The WUTC accepted this accounting treatment for PacifiCorp's revenues from the sale of renewable energy attributes and included such revenues in PacifiCorp's rates on this basis for many years. Importantly, during this time period, the Commission accepted the same Account 456 treatment for the revenues from the sale of renewable energy attributes of another Washington public utility, Avista Corporation.

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[2] *WUTC v. PacifiCorp d/b/a Pacific Power & Light*, Final Order Rejecting Tariff Sheets; Authorizing Increased Rates; and Requiring Compliance Filing, Docket UE-100749, Order 06 (2011).

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14. On May 24, 2011, as directed by Order 06, PacifiCorp filed a detailed accounting of its revenues from the sale of renewable energy attributes from January 2009 to December 2010, the most recent date for which data was available, and a forecast of revenues from the sale of renewable energy attributes from January 1, 2011, through March 31, 2012. PacifiCorp also filed a proposal for tracking revenues from the sale of renewable energy attributes accrued on or after April 3, 2011 (the effective date of Order 06) and allocating those revenues to customers.

15. The WUTC issued Order 10 in Docket UE-100749 on August 23, 2012. It rejected PacifiCorp's accounting and proposed tracking mechanism. Instead, it required PacifiCorp to credit to its customers the actual and imputed revenues from the actual or deemed sale of renewable energy attributes.

16. Order 10 further directed PacifiCorp to issue credits for actual and imputed revenues from actual or deemed sales for a period beginning more than two years before the April 3, 2011 effective date of Order 06. Thus, the WUTC required future bill credits for revenues from the sale of renewable energy attributes that PacifiCorp earned and accounted for in rates during prior rate periods.

17. Only two of the three WUTC Commissioners signed Order 10; Commissioner Phil Jones did not join Order 10 and later dissented from Order 11.

18. In an attempt to justify reaching back into prior rate periods, the WUTC determined in Order 10 that PacifiCorp's revenues from the sales of renewable energy attributes were equivalent to gain on the sale of utility property. In particular, the WUTC concluded that renewable energy attributes are like utility property because they are "useful or necessary" in PacifiCorp's duties to the public to comply with Washington's EIA.

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19. The EIA requires Washington utilities to use renewable resources to meet a certain portion of their customers' electricity requirements after 2012. A Washington utility can comply by providing generation from its own renewable energy facilities or by purchasing RECs. To qualify as RECs for compliance with the Washington law, the renewable energy must have been produced in or after 2011. A Washington utility may buy Washington qualified RECs from renewable generators to meet its Washington obligations.

20. By reclassifying revenues from the sales of renewable energy attributes as comparable to gain on the sale of utility property, the WUTC tried to justify its decision to bypass its usual ratemaking process to capture revenues in excess of the amount that had been estimated in approved rates. Yet no party to the case ever put forth the argument that revenues from the sales of renewable energy attributes should be treated like gain from the sale of utility property. In contrast to utility property, PacifiCorp's renewable energy production is excluded from the rate base upon which PacifiCorp earns a return (*i.e.*, profit). Moreover, the WUTC failed to develop a record regarding this about-face in accounting classification and ratemaking treatment. The WUTC concluded that revenues from the sales of renewable energy attributes booked before the April 3, 2011 effective date of Order 06 could be credited to customers on a post-hoc basis, without reasonable notice to PacifiCorp of the change in ratemaking treatment.

21. In Order 10, the WUTC also decided to establish a value for renewable energy attributes that had not actually been sold. Order 10 requires PacifiCorp to issue future credits based on the WUTC's hypothetical values for renewable energy attributes that PacifiCorp used to satisfy Oregon and California renewable portfolio standards. Order 10 also modified the REC tracking mechanism established in Order 06.

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22. On September 4, 2012, PacifiCorp filed a timely Petition for Reconsideration and Motion to Reopen Record, and a Petition for Stay of Order 10. PacifiCorp's Petition for Reconsideration addressed the WUTC's new accounting treatment for revenues from the sales of renewable energy attributes and offered evidence demonstrating that this accounting treatment impermissibly reclassified such revenues in rates on a retroactive basis.

23. On November 30, 2012, the two WUTC Commissioners who joined Order 10 issued Order 11, denying PacifiCorp's Petition for Reconsideration, Motion to Reopen Record, and Petition for Stay of Order 10.

24. Commissioner Jones dissented from Order 11, stating that renewable energy attributes/RECs are inextricably linked to the energy produced by renewable energy facilities. Significantly, he concluded that PacifiCorp's historical revenues from the sales of renewable energy attributes were not comparable to utility property, were not always outside the ratemaking process, and should not be subject to redistribution to customers at any point in the future. Commissioner Jones concluded that the WUTC's prior treatment of PacifiCorp's and other companies' revenues from the sales of renewable energy attributes gave PacifiCorp a reasonable basis to consider such revenues as part of the ratemaking process. Commissioner Jones also stated that PacifiCorp was entitled to reasonable notice before the WUTC accorded different treatment to such revenues on a going forward basis.

REASONS WHY RELIEF SHOULD BE GRANTED

25. PacifiCorp has filed this petition because Order 10's and Order 11's requirements are unconstitutional, outside of the WUTC's statutory authority, a violation of prescribed procedures, erroneous interpretations of law, unsupported by substantial evidence, inconsistent with WUTC rules, and arbitrary and capricious.

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26. Orders unconstitutional as applied – RCW 34.05.570(3)(a).

(a) Uncompensated Taking: The Orders are unconstitutional as applied under the Fifth and Fourteenth amendments of the U.S. Constitution and Article I, Section 16 of the Washington Constitution because they retroactively reclassified certain of PacifiCorp's operating revenues, disregarded the impact of this retroactive reclassification on PacifiCorp's return on equity, and resulted in rates that fail the standard of fair, just, reasonable, and sufficient. The Orders treat expenses and revenues related to renewable resources differently, resulting in PacifiCorp's asymmetrical under-recovery of its expenses, while requiring more than 100 percent credits of actual revenues from the sales of renewable energy attributes to PacifiCorp's ratepayers. The Orders result in confiscatory rates in violation of the takings clauses of the Fifth and Fourteenth amendments of the U.S. Constitution and Article I, Section 16 of the Washington Constitution.

(b) Procedural Due Process: The WUTC violated the procedural due process clauses of the U.S. Constitution (Fifth and Fourteenth amendments) and Washington Constitution (Article I, Section 3) by taking the following actions without providing PacifiCorp notice, an opportunity to be heard, and an opportunity to present contrary evidence: treating PacifiCorp's renewable energy attributes/RECs outside the normal ratemaking process, classifying PacifiCorp's renewable energy attributes/RECs as property and related revenues as gain on the sale of utility property, imputing value to PacifiCorp's 2009 and 2010 renewable energy attributes, imputing value to renewable energy attributes that could not be used to meet Washington State EIA requirements, assuming without evidence that PacifiCorp could have sold 100 percent of its renewable energy attributes held for compliance in other states, departing from past policy on treatment of renewable energy attributes, and selectively taking past revenues without regard to past expenses.

27. Orders outside WUTC's statutory authority – RCW 34.05.570(3)(b). The Orders are outside the WUTC's statutory authority because they:

(a) Constitute retroactive ratemaking contrary to RCW 80.28.020, which provides that the WUTC "shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be *thereafter observed and in force*, and shall fix the same by order" (emphasis added); the Orders violate the prohibition against retroactive ratemaking by reclassifying past renewable energy attribute revenues, exempting renewable energy attribute revenues from the prohibition on retroactive ratemaking, and retroactively revising the treatment accorded to revenues from the sales of renewable energy attributes in past WUTC proceedings;

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(b) Result in rates that are not "just, fair, reasonable and sufficient," as required by RCW 80.28.010;

(c) Fail to consider their impact on PacifiCorp's ability to earn a return on equity; and

(d) Treat sales of renewable energy attributes outside the normal ratemaking process and involve single-issue ratemaking.

28. WUTC engaged in unlawful procedure – RCW 34.05.570(3)(c). The WUTC engaged in unlawful procedure in issuing the Orders because it did not provide PacifiCorp prior notice that it might reclassify revenues from the sales of renewable energy attributes as gain on the sale of utility property, treat such revenues outside the normal ratemaking process, establish values for unsold renewable energy attributes, and require a rate credit from January 2009 forward, thus violating the prohibition of WAC 480-100-203(3) against deviating from the uniform system of accounts without notice; engaging in property valuation without the notice required by RCW 80.04.250(3); and depriving PacifiCorp an opportunity to refute the WUTC's assumptions with evidence in violation of RCW 80.04.120.

29. Orders contain errors of law – RCW 34.05.570(3)(d). The Orders contain the following errors of law:

(a) The WUTC erred by classifying PacifiCorp's renewable energy attributes as utility property even though Washington law defines renewable energy attributes/RECs as associated with electricity generation;

(b) The WUTC erred by treating revenues from the sales of renewable energy attributes accrued prior to January 1, 2011, as properly allocated to Washington customers or comparable to gain on the sale of utility property because pre-2011 renewable energy attributes are not Washington RECs under Washington's EIA and could not be categorized as useful or necessary property;

(c) The WUTC erred by retroactively reclassifying PacifiCorp's revenues from the sales of renewable energy attributes;

(d) The WUTC erred by failing to consider the impact of reclassification of PacifiCorp's revenues from the sales of

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renewable energy attributes on the sufficiency of its rates and its return on equity;

(e) The WUTC erred by treating PacifiCorp's revenues from the sales of renewable energy attributes outside normal ratemaking procedures;

(f) The WUTC erred by concluding that it never approved or accepted PacifiCorp's classification of its revenues from the sales of renewable energy attributes as operating revenues between 2006 and 2011;

(g) The WUTC erred by imputing value to renewable energy attributes that were held for compliance in other states; and

(h) The WUTC erred by imputing value to renewable energy attributes at prices in excess of marketable value.

30. Orders not supported by substantial evidence – RCW 34.05.570(3)(e). The Orders' conclusions on the following issues were not supported by substantial evidence:

(a) Whether PacifiCorp's renewable energy attributes are equivalent to utility property that is subject to chapter 80.12 RCW even though the EIA defines RECs as associated with electricity generation;

(b) Whether revenues from the sales of renewable energy attributes accrued prior to January 1, 2011, are properly allocated to Washington customers or comparable to gain on the sale of utility property even though pre-2011 renewable energy attributes do not qualify as Washington RECs under the EIA and therefore are not useful or necessary in satisfying any Washington requirement;

(c) Whether PacifiCorp had disclosed to the WUTC that it accounted for its revenues from the sales of renewable energy attributes as operating revenues in Account 456, "Other Electric Revenue;"

(d) Whether the WUTC had approved or accepted PacifiCorp's classification of its revenues from the sales of renewable energy attributes as operating revenues between 2006 and 2011;

(e) Whether values could be imputed to renewable energy attributes that were held for compliance in other states; the Orders erred in adopting an assumption that PacifiCorp could have sold 100 percent of its renewable energy attributes and in adopting assumptions regarding the prices for such sales; and

(f) Whether values could be imputed to renewable energy attributes at prices in excess of marketable value.

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31. Orders inconsistent with WUTC's precedent – RCW 34.05.570(3)(h). The Orders are inconsistent with the WUTC's previous treatment of PacifiCorp's revenues from the sales of renewable energy attributes and the WUTC's previous treatment of Puget Sound Energy, Inc.'s and Avista Corporation's revenues from the sales of renewable energy attributes. The WUTC failed to explain this inconsistency in its Orders by stating facts and reasons to demonstrate a rational basis for the inconsistency. The Orders adopt more punitive treatment for PacifiCorp than the WUTC has adopted for other Washington utilities.

32. Orders arbitrary and capricious – RCW 34.05.570(3)(i). The Orders are arbitrary and capricious because they:

(a) Concluded PacifiCorp's renewable energy attributes are equivalent to utility property even though the EIA defines RECs as associated with electricity generation;

(b) Concluded revenues from the sales of renewable energy attributes accrued prior to January 1, 2011, are properly allocated to Washington customers or comparable to gain on the sale of utility property even though pre-2011 renewable energy attributes do not qualify as Washington RECs under the EIA and therefore are not useful or necessary in satisfying any Washington requirement;

(c) Concluded PacifiCorp had not disclosed to the WUTC that it accounted for its revenues from the sales of renewable energy attributes as operating revenues in Account 456, "Other Electric Revenue";

(d) Concluded the WUTC never approved or accepted PacifiCorp's classification of its revenues from the sales of renewable energy attributes as operating revenues between 2006 and 2011;

(e) Failed to consider their impact on the sufficiency of PacifiCorp's rates or its return on equity;

(f) Treated PacifiCorp's revenues from the sales of renewable energy attributes outside normal ratemaking procedures;

(g) Imputed value to renewable energy attributes that were held for compliance in other states; and

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(h) Imputed value to renewable energy attributes at prices in excess of marketable value.

REQUEST FOR RELIEF

PacifiCorp requests that the Court grant the following relief:

A. Entry of judgment under RCW 34.05.570 and RCW 34.05.574 vacating the Orders as unconstitutional, outside the WUTC's statutory authority, a violation of procedure, an error of law, not supported by substantial evidence, inconsistent with WUTC precedent, and arbitrary and capricious, and directing that the WUTC revise the Orders to eliminate all provisions involving revenues from the sales of renewable energy attributes (referred to as REC sale proceeds in Orders 10 and 11) actually or deemed accrued prior to April 3, 2011;

B. In the alternative, entry of an order vacating the Orders and remanding to the WUTC under RCW 34.05.574 with instructions to enter an order consistent with the Court's determinations; and

C. Grant such other relief as the Court determines is just and appropriate.

DATED this 28th day of December, 2012.

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EXHIBIT 1

[Service Date August 23, 2012]

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET UE-100749
Complainant,	)	ORDER 10
v.	)	
PACIFICORP D/B/A PACIFIC POWER & LIGHT COMPANY,	)	ORDER ESTABLISHING DISPOSITION OF PROCEEDS 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)[1] 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

[1] 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,[2] 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."[3] 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."[4] Consistent with these definitions, the Commission previously defined RECs as "intangible assets that represent the right to claim the environmental

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[2] The Energy Project and Wal-Mart, Inc., did not actively participate in Phase II of this docket.

[3] RCW 19.285.030(17).

[4] 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."[5]

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.[6] 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.[7]

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.[8]

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.[9]

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[5] *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).

[6] RCW 19.285.040 (2)(a).

[7] *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.").

[8] 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.

[9] 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.[10] 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.[11] 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.[12]

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,[13] 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."[14] We now

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[10] 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.

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

[12] *Id.* Attachment (Settlement Agreement) ¶ 22.

[13] Order 06 ¶ 201.

[14] *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.[15] 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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[15] 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,[16] represent retroactive, single-issue ratemaking,[17] and collaterally attack prior rate case decisions.[18]

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[16] 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 (9th 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,[19] 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.[20]

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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[17] 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.

[18] 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.

[19] 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, 3rd Supp. Order ¶ 24 (Sept. 27, 2002). Such a deferral is initiated by the filing what is termed a "deferred accounting petition."

[20] 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.[21] 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.[22] We continue to find that RECs, at a minimum, are comparable to utility property with respect to disposition of sale proceeds.[23] Utility property sale proceeds *may* be credited to customers through rates, as a portion of PSE's REC sale proceeds were distributed.[24] 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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[21] 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.

[22] PSE REC Order ¶¶ 40-41.

[23] 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.

[24] *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.[25]

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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[25] *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.[26]

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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[26] *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.[27] 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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[27] 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.[28] 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.[29] 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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[28] 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.

[29] 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."[30] 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.[31] 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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[30] Public Counsel Phase II Opening Brief ¶ 62.

[31] 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.[32] 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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[32] 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.[33] Staff is silent on this request while Joint Parties endorse it.[34] The Company proposes to submit a full accounting of REC sale proceeds actually received from April 1, 2011 through December 31, 2011.[35] In each subsequent year, the accounting of actual REC sale proceeds would be provided for the full calendar year.[36] The Company also proposes to provide an estimate of the REC sale proceeds it expects to receive for calendar year 2012.[37] In each subsequent year, PacifiCorp would provide an estimate for that calendar year.[38] 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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[33] Dalley, Exh. No. RBD-25T 6:21-24.

[34] Schoenbeck, Exh. No. DWS-5CT 8:5-7.

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

[36] Dalley, Exh. No. RBD-25T 7:1-2.

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

[38] 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.[39]

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.[40] To ensure compliance with the Washington's RPS when the number of RPS-eligible RECs allocated to Washington by the Revised Protocol[41] 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.[42] 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.[43] 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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[39] Dalley, Exh. No. RBD-25T 7:10-12.

[40] Dalley, Exh. No. RBD-25T 8:17-20.

[41] 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.

[42] Dalley, Exh. No. RBD-25T 9:3-6.

[43] Schoenbeck, Exh. No. DWS-5CT 6:17-20.

held for RPS compliance by resource.[44] 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.[45]

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.[46] 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.[47] Joint Parties expressly agree with including in the tracking account the Company's "pseudo" REC calculation.[48]

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.[49] 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.[50] 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.[51]

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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[44] Schoenbeck, Exh. No. DWS-5CT 6:20-23.

[45] Schoenbeck, Exh. No. DWS-5CT 8:4-13.

[46] Schoenbeck, Exh. No. DWS-5CT 8:15-20.

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

[48] Schoenbeck, Exh. No. DWS-5CT 8:5-8.

[49] Breda, Exh. No. KHB-7T 10:12-15.

[50] Breda, Exh. No. KHB-7T 10:19-11:8.

[51] 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."[52] 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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[52] 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.

EXHIBIT 2

[Service Date November 30, 2012]

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

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[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

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[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

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[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.

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[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

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[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

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[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

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[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

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[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

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[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 *re*classifying 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

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[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

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[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)

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[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

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[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

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[40] Foisy, Exh. No. MDF-1CT at 8-15.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

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

Petitioner,

v.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, a Washington state agency,

Respondent.

No. 12-2-02667-7

SUMMONS ON PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION

TO THE RESPONDENT: A lawsuit has been started against you in the above-entitled court by PacifiCorp d/b/a Pacific Power & Light Company. Petitioner's claim is stated in the written petition, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the petition by stating your defense in writing, and serve a copy upon the person signing this summons within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where petitioner is entitled to what it asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

You may demand that the petitioner file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing this summons. Within 14 days after you serve demand, the petitioner must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

K&L GATES LLP
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SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

This summons is issued pursuant to the Superior Court Civil Rules of the State of Washington.

DATED this 28th day of December, 2012.

K&L GATES LLP

By _____
Elizabeth Thomas, WSBA # 11544
Kari Vander Stoep, WSBA #35923
Attorneys for Petitioner
PacifiCorp d/b/a Pacific Power & Light Company

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

PACIFICORP d/b/a PACIFIC POWER & LIGHT COMPANY, Petitioner, v. WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, a Washington state agency, Respondent.	No. 12-2-02667-7 DECLARATION OF SERVICE

I, Laura G. White, under penalty of perjury of the laws of the State of Washington, declare as follows:

1. I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, and competent to be a witness in the above action, and not a party thereto.

2. On the 28th day of December, 2012, I delivered true and correct copies of the PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION and SUMMONS by depositing in the U.S. mail, first class, postage prepaid, addressed as follows:

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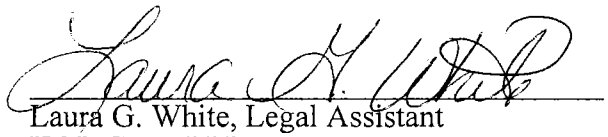
SIGNED at Seattle, Washington this 28th day of December, 2012.



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