

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

Complainant,

vs.

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

Respondent.

**DOCKET UE-100749**

**PACIFICORP'S SUPPLEMENTAL  
FILING IN COMPLIANCE WITH  
ORDERS 10 AND 11**

**I. INTRODUCTION**

1. In response to Washington Utilities and Transportation Commission (Commission) Administrative Law Judge (ALJ) Gregory J. Kopta's Notice Providing Opportunity to File in Compliance with Orders 10 and 11 issued on March 8, 2013 (March 8 Notice), PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp or the Company) respectfully submits this supplemental compliance filing.<sup>1</sup>
2. On February 28, 2013, PacifiCorp made a filing jointly with Commission Staff, the Industrial Customers of Northwest Utilities (ICNU), and Public Counsel to comply with Orders 10 and 11 in Docket UE-100749 (the March 8 Notice refers to this filing as the "March 1 Letter," as does this filing). The March 1 Letter described the parties' joint proposal for a tracking mechanism to account for renewable energy credit (REC) and renewable energy attribute (REA)

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<sup>1</sup> This supplemental compliance filing reflects the Company's understanding of Orders 6, 10, 11 and 12 in Docket UE-100749. By submitting this filing, the Company is not indicating acceptance of or agreement with the terms of Orders 10 and 11. The Company filed for judicial review of Commission Orders 10 and 11 on December 28, 2012, and reserves all rights pending the outcome of the appeal.

revenues, and calculated Washington's allocated REC and REA revenues. In describing the operation of the mechanism, the March 1 Letter specifically noted that interest on pre-April 2, 2011 balances (referred to throughout as historical REC/REA revenues) would accrue from the date of Order 10, August 23, 2012, when the Commission first ordered PacifiCorp to establish a regulatory liability for these amounts.

3. The March 8 Notice stated that the parties' March 1 Letter failed to comply with Order 10 and 11 by proposing a mechanism for future but not historical REC/REA revenues. Specifically, the March 8 Notice states that Order 10 and 11 "require more than offering an unspecified mechanism to credit historic proceeds that is *similar* to the future credit mechanism and that could be 'potentially modified to lengthen the amortization period' for an indeterminate amount of time."

4. The March 8 Notice provided parties an opportunity to make an additional compliance filing addressing the following: (1) the agreed or proposed mechanism for crediting to customers proceeds from REC sales from January 1, 2009, through April 2, 2011, and specifically any differences between this mechanism and the mechanism to which the parties agreed for crediting future REC sale proceeds; (2) the agreed or proposed amortization period for crediting proceeds from REC sales from January 1, 2009, through April 2, 2011, and calculations of the monthly credit for specific amortization periods; and (3) a discussion of whether the Commission has the authority and should require PacifiCorp to calculate the interest on the Company's historical REC sales proceeds beginning on January 1, 2009, rather than on August 23, 2012, the date to which the parties agreed.

5. This filing addresses the March 8 Notice by clarifying that the parties' tracking mechanism is intended to apply to both future and historical REC/REA revenues. PacifiCorp

also reiterates its position that, pending judicial review of Orders 10 and 11, the Commission should not amortize historical REC/REA revenues or pre-determine the amortization commencement date and period for these revenues.<sup>2</sup> With respect to the Commission's third inquiry, the Commission does not have the authority to order interest to accrue retroactively beginning on January 1, 2009. Even if the Commission did have the authority, the equities weigh against such a decision in this case.

## II. DISCUSSION

### A. Tracking Mechanism for Crediting to Customers Historical REC/REA Revenues.

6. The parties' tracking mechanism described in the March 1 Letter applies to both future and historical REC/REA revenues. The only difference between the future and historical mechanism is that, as stated in the March 1 Letter, the Commission might wish to modify the historical mechanism "to lengthen the amortization period to avoid significant fluctuations in customer rates."

7. Question 1 in the March 8 Notice specifically directs the parties to provide the "date on which the Company should begin to provide the [historical] credits." The parties do not have a joint position on this issue.

8. PacifiCorp has consistently taken the position that the Commission should not order amortization of the historical credits pending resolution of the Company's Petition for Judicial Review. PacifiCorp previously filed to stay Order 10 on this basis, seeking to preserve the status quo pending judicial review and noting that, because PacifiCorp had recorded a regulatory

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<sup>2</sup> For informational purposes, Attachment A to this supplemental compliance filing includes illustrative monthly credit calculations for the amortization periods requested by the Commission.

liability for the historical revenues on which interest was accruing, there was no risk of prejudice to the parties in staying or abating amortization of the historical REC/REA revenues.<sup>3</sup>

9. In Order 11, the Commission denied the stay because “Order 10 requires only that PacifiCorp calculate the amount of historic REC sale proceeds the Commission has required to be credited to rate payers and develop a mechanism . . . for crediting that amount.”<sup>4</sup> The Commission stated that it had not yet determined when to implement the mechanism and acknowledged that the Commission could determine “not to require the Company to implement credits of historic REC sales proceeds until the conclusion of any judicial review.”<sup>5</sup>
10. Consistent with Order 11, PacifiCorp asks the Commission to accept the parties’ March 1 Letter as compliant with Order 10 without setting a specific commencement date for amortization of the historical REC/REA revenues. By waiting until judicial review is concluded to start amortization, the Commission will maintain the status quo, avoid prejudice to any party, obviate the need for PacifiCorp to renew its petitions to stay and/or for deferred accounting, and avoid triggering a new round of procedural litigation in this case.

**B. Amortization Period for Crediting REC/REA Revenues Booked from January 1, 2009, through April 2, 2011.**

11. The March 8 Notice also asked the parties to provide the specific amortization period for crediting historical REC revenues, the reasons for proposing the period, and a calculation of the monthly credit amount for amortization periods of one, three, and five years, and a single credit.

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<sup>3</sup> The Commission has previously granted a stay of a final order to preserve the status quo when a party seeks reconsideration or review of a Commission decision. *Re Determining the Proper Carrier Classification of and Complaint for Penalties against Zida Labor Services*, Docket TV-091498, Order 04 (July 23, 2010). A stay that does not operate to the prejudice of any party supports the finding that a stay is appropriate. *Wash. Utils. & Transp. Comm’n v. Int’l Pac., Inc.*, Docket UT-911482, 6<sup>th</sup> Supp. Order (Nov. 22, 1993).

<sup>4</sup> *Wash. Utils. & Transp. Comm’n v. PacifiCorp*, Docket UE-100749, Order 11 at ¶ 38 (Nov. 30, 2012).

<sup>5</sup> *Id.* (“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.”)

12. The parties do not have a joint position on this issue. PacifiCorp submits that, like the amortization commencement date, the Commission should not determine the amortization period for historical REC/REA revenues before the resolution of the Company's Petition for Judicial Review.

13. The March 8 Notice directed the parties to provide calculations for monthly credit amounts for different amortization periods. Before resolution of the Company's Petition for Judicial Review, it is impossible to calculate specific monthly credit amounts without making numerous assumptions. Therefore, to respond to the March 8 Notice, the Company has calculated the monthly credit for the periods specified in the March 8 Notice assuming that: (1) Order 10 and 11 are upheld on judicial review and PacifiCorp is ordered to provide a rate credit for the full amount of the contested historical revenues; (2) the Company begins crediting these historical revenues on January 1, 2015; (3) interest began accruing on the regulatory liability on August 23, 2012; and (4) the Company's cost of capital does not change before the end of the amortization period.

14. These calculations are included in Attachment A to this supplemental compliance filing. Using the assumptions set forth above, the monthly credit may range from \$20.3 million for a one-time credit to \$0.4 million if the credit is amortized over five years. The Company believes the amortization period should be determined once judicial review of Orders 10 and 11 is resolved and the final amount of the contested historical revenues is certain.

**C. Calculation of Interest on Historical REC/REA Revenues.**

15. The March 1 Letter reflected the parties' agreement that the Company would accrue interest on the historical REC/REA revenues from the date of Order 10, August 23, 2012. The parties noted that this approach was consistent with the Company's accounting treatment, where

a regulatory liability was established upon receipt Order 10 and is accruing interest each month. The March 8 Notice directed parties to discuss whether the Commission has the authority and should require PacifiCorp to accrue interest on the date the REC/REA proceeds were received, beginning January 1, 2009.

16. The parties do not have a joint position on the Commission's authority to require PacifiCorp to accrue interest starting on January 1, 2009. As just explained, however, the parties' joint position is that interest should accrue on the historical REC/REA revenues as of August 23, 2012.

17. PacifiCorp submits that the Commission lacks authority to set an accrual date for interest commencing on January 1, 2009, and should approve the parties' joint position for the accrual of interest commencing August 23, 2012.

**1. The Commission Does Not Have the Authority to Retroactively Calculate Interest on REC/REA Revenues Beginning January 1, 2009.**

18. The parties' position that interest should accrue as of the date of the creation of the regulatory liability for historical REC/REA revenues follows the Commission's normal practice of using regulatory accounting conventions as the basis for interest calculations in rates. The Commission has held that interest starts to accrue only after a regulatory account is properly established by Commission order. For example, in Puget Sound Energy's (PSE) 2004 rate case, the Commission denied interest on a regulatory asset that was not properly authorized by the Commission.<sup>6</sup> The Commission has also ordered interest to accrue concurrently with the

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<sup>6</sup> *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Docket UG-040640, Order 06 ¶ 170 (Feb. 18, 2005) (“[T]he Commission absolutely requires a company that wishes to book costs to a deferral account for treatment as a regulatory asset to first apply for and obtain express authority to do so. We reiterate, and reemphasize that principal here.” The Commission “denied a return on the remaining balance in the rate case expense deferral account that it maintained, without express authority.”)

establishment of a regulatory liability in many cases,<sup>7</sup> and has never ordered accrual of interest pre-dating the establishment of a regulatory account.

19. The Commission has now issued four Orders<sup>8</sup> and multiple Notices addressing REC/REA revenues. All are silent on whether the regulatory liability for historical REC/REA revenues should bear interest. None ever suggested that the Commission would, for the first time, take the extraordinary step of imposing a retroactive interest obligation. In this context, a retroactive interest accrual date would constitute an unnoticed and impermissible change to the Commission's approach to the accrual of interest on regulatory accounts. Based upon the law prohibiting retroactive ratemaking, which PacifiCorp has briefed extensively in prior filings in this docket,<sup>9</sup> the Commission lacks legal authority to backdate interest accruals in this manner.

**2. The Commission Should Not Retroactively Calculate Interest on REC/REA Revenues Beginning on January 1, 2009.**

20. Even if the Commission finds that it has the authority to retroactively calculate interest on historical REC/REA revenues back to January 1, 2009, the Commission should decline to do so under the circumstances of this case.

First, all parties support an interest accrual date tied to the creation of PacifiCorp's regulatory liability for historical REC/REA revenues. The Commission has previously found

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<sup>7</sup> See, e.g., *Re Joint Application of MidAmerican Energy Holdings and PacifiCorp For an Order Authorizing Proposed Transaction*, Docket UE-051090, Order 08, Appendix A (2006); *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-060552, Order 01 (2007).

<sup>8</sup> *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Order 06 (Mar. 25, 2011); *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Order 10 (Aug. 23, 2012); *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Order 11 (Nov. 30, 2012); *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Order 12 (Dec. 28, 2012).

<sup>9</sup> See, e.g., PacifiCorp's Initial Post-Hearing Brief on Rate Treatment for Renewable Energy Credit Revenues ¶¶ 53-76; Petition for Reconsideration ¶¶ 18-39.

that it would be unfair to negate parties' agreed rate treatment for a regulatory account when the parties never raised any concerns with the agreed treatment.<sup>10</sup>

21. Second, after more than two years of litigation over historical REC/REA revenues, no party ever made a claim or offered evidence supporting the accrual of interest on historical REC revenues back to 2009. Based upon the record in this case, a decision to accrue interest beginning in 2009 would not be supported by substantial evidence.
22. Third, before Order 10, PacifiCorp did not have a regulatory account for historical REC/REA revenues on which customers could earn a return. Imputing a regulatory liability before the date it was actually established in order to backdate interest to 2009 makes the impact of Orders 10 and 11 on PacifiCorp all the more harsh.
23. Fourth, the March 8 Notice is the first time in the Commission's four orders<sup>11</sup> and multiple notices on REC/REA revenues that the Commission raised the possibility of requiring interest to be calculated back to 2009. Requiring an interest obligation to apply retroactively is a major policy change for the Commission. The Commission should make such a change on a prospective basis only and accept the parties' joint position in this case to accrue interest beginning on August 23, 2012.
24. A recent case addressing the date upon which PSE should begin accruing interest on a federal grant supports PacifiCorp's equitable arguments in support of the parties' joint position on the accrual of interest. In Docket UE-091570, the Commission approved PSE's petition for an accounting order requesting authorization to track into rates an American Recovery and

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<sup>10</sup> Docket UG-040640, Order 06 ¶ 171 (Feb. 18, 2005).

<sup>11</sup> *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Order 06 (Mar. 25, 2011); *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Order 10 (Aug. 23, 2012); *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Order 11 (Nov. 30, 2012); *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Order 12 (Dec. 28, 2012).



Reinvestment Act of 2009 (ARRA) grant that PSE would be eligible to receive from the Department of Treasury (Treasury Grant).<sup>12</sup> Federal law provided that the Treasury Grant was governed by the Investment Tax Credit normalization requirements. The Commission's approval of PSE's accounting request included approval of the normalization treatment of the Treasury Grant, which meant that customers could not receive interest on the grant. After PSE received the grant, the ARRA was amended to allow customers to receive interest on the grant. The Commission evaluated whether interest should be calculated beginning on the date PSE received the grant, or on the later date of the amendment.

25. Staff argued that the amendment allowed the Commission to calculate interest back to the date PSE received the grant.<sup>13</sup> ICNU argued that the Commission was required to calculate interest back to the date PSE received the grant.<sup>14</sup> PSE argued that customers could receive interest starting the date of the amendment, and objected to Staff's and ICNU's proposals on a number of bases, including the filed rate doctrine and the prohibition against retroactive ratemaking.<sup>15</sup>

26. In its order, the Commission disregarded the parties' arguments on the filed rate doctrine and retroactive ratemaking because "the outcome of this dispute turns not on law, but on balancing equitable considerations in the Commission's exercise of its discretion."<sup>16</sup> The

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<sup>12</sup> *Re Petition of Puget Sound Energy, Inc. for an Accounting Order Regarding the Treatment of U.S. Treasury Grant*, Docket UE-091570, Order 01 (Dec. 10, 2009).

<sup>13</sup> *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Docket UE-120277, Response Brief on Behalf of Commission Staff (May 4, 2012).

<sup>14</sup> Docket UE-120277, Response Brief on Behalf the Industrial Customers of Northwest Utilities (May 4, 2012).

<sup>15</sup> Docket UE-120277, Reply Brief of Puget Sound Energy, Inc. (May 14, 2012).

<sup>16</sup> Docket UE-120277, Order 02 ¶ 20; n.36.

Commission's decision rested on an evaluation of the equities of the circumstances and finding that they weighed in PSE's favor.<sup>17</sup>

27. One of the equitable considerations cited by the Commission was that the accounting treatment authorized for the grant "did not treat these funds as a regulatory liability in a deferral account where any allowed return would accumulate for later treatment in rates."<sup>18</sup> The Commission explained why this was a deciding factor in the case:

There is no account on PSE's books that includes a pool of ratepayer dollars representing any return PSE may have been authorized to earn on the Treasury Grant. Thus, to now unwind the accounting treatment the Commission previously authorized by requiring PSE to credit customers with a return for the period when normalization remained in effect means that PSE would be required to reach into its shareholders' pockets. This, to us, simply seems unfair.<sup>19</sup>

28. There are many parallels between this case and the PSE case, most notably the unfairness of imputing the existence of a regulatory account in order to backdate interest. Applying the reasoning from the PSE case, the Commission should accept the parties' joint position commencing interest accruals on the historical REC/REA revenues as of August 23, 2012, and reject an approach that would accrue interest retroactively to January 2009.

### III. CONCLUSION

29. For the reasons set forth above, the Company respectfully requests that the Commission: (1) accept the parties' proposed mechanism for crediting historical REC/REA revenues, as clarified in the filing, and deem the March 1 Letter to be in full compliance with Orders 10 and 11; (2) agree to set the amortization commencement date and amortization period for historical REC/REA revenues after resolution of the Company's Petition for Judicial Review of

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<sup>17</sup> *Id.* ¶ 25.

<sup>18</sup> *Id.* ¶ 28.

<sup>19</sup> *Id.*

Orders 10 and 11; and (3) approve the parties' joint position for accrual of interest on historical REC/REA revenues starting August 23, 2012, the issuance date of Order 10.

DATED: March 22, 2013.

Respectfully Submitted,



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**PacifiCorp**

**Supplemental Filing in Compliance with Orders 10 and 11**

**ATTACHMENT A**

Amortization Period Scenarios Requested by March 8, 2013 Notice									
Amortization Period	Amortization Beginning Date	Amortization End Date	Total WA-Alloc. Revenues (Jan. 1, 2009 thru March 31, 2011) <sup>(1)</sup>	Total Including Interest	Annual Credit	Overall Annual Bill Impact (%)	Monthly Credit		
Five Years	January 1, 2015	December 31, 2019	\$17,256,077	\$23,811,731	\$4,762,346	-1.6%	\$396,862		
Three Years	January 1, 2015	December 31, 2017	\$17,256,077	\$22,335,019	\$7,445,006	-2.4%	\$620,417		
One Year	January 1, 2015	December 31, 2015	\$17,256,077	\$20,918,619	\$20,918,619	-6.9%	\$1,743,218		
One Time	January 1, 2015	January 31, 2015	\$17,256,077	\$20,289,659	\$20,289,659	-6.7%	\$20,289,659		

Notes:

- (1) Revenues from January 1, 2009, through March 31, 2011, are consistent with the amounts provided in Attachment A of the Company's February 28, 2013 compliance filing.
- (2) Interest is calculated using the Company's authorized after tax rate of return of 6.72%.
- (3) The amounts reflected do not include any REC/REA revenues already credited through Schedule 95.