

March 26, 2013

***VIA ELECTRONIC FILING  
AND OVERNIGHT DELIVERY***

Washington Utilities and Transportation Commission  
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Olympia, WA 98504-7250

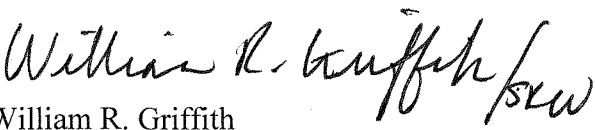
Attn: Steven V. King  
Acting Executive Director and Secretary

**RE: UE-100749—Motion to Modify Confidentiality Designations**

PacifiCorp d/b/a Pacific Power & Light Company (Company) submits for filing its Motion to Modify Confidentiality Designations. A revised exhibit list is enclosed as Appendix A. For the Commission's convenience, the Company is also including revised versions of the documents with revised confidentiality designations as Appendix B.

Please direct any informal inquiries regarding this filing to Bryce Dalley, Director, Regulatory Affairs & Revenue Requirement, at (503) 813-6389.

Sincerely,

  
William R. Griffith  
Vice President, Regulation

Enclosures

cc: Service List UE-100749

## CERTIFICATE OF SERVICE

I certify that I have cause to be served the foregoing document, via E-mail, to the following:

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DATED this 26<sup>th</sup> day of March 2013.

  
\_\_\_\_\_  
Amy Eissler  
Coordinator, Regulatory Operations

**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**

**MOTION TO MODIFY  
CONFIDENTIALITY  
DESIGNATIONS**

**I. STATEMENT OF FACTS AND ISSUES**

1. In accordance with WAC 480-07-375 and WAC 480-07-490, PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp) moves the Washington Utilities and Transportation Commission (Commission) for an order reopening the record for the limited purpose of modifying the confidentiality designations of certain documents that were previously designated as confidential under the protective order in this docket.<sup>1</sup>
2. PacifiCorp reviewed each document that included information that was designated as confidential in both phases of this proceeding. Those documents are listed in **Appendix A** to this motion.
3. PacifiCorp determined that each of the documents in Appendix A should retain its original confidentiality designation *except* for those documents or portions of documents highlighted in yellow in Appendix A.

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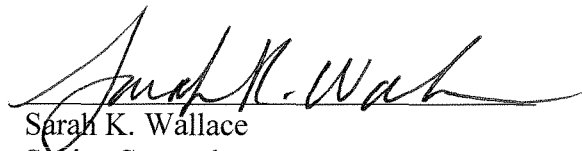
<sup>1</sup> *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Order 02 (May 13, 2010).

4. For the Commission's convenience, attached as Appendix B are revised versions of the documents listed in Appendix A that were originally submitted by PacifiCorp. These documents have been revised to reflect changes in confidentiality designations and to correct the legend required by paragraph four of the protective order in this docket. To avoid confusion, the exhibit numbers of the documents have not been changed. Revised redacted versions of those documents where only some of the confidential information has been re-designated are also included in Appendix B.

## II. RELIEF REQUESTED

5. PacifiCorp respectfully requests that the Commission modify the record to change the confidentiality designations for the documents or portions of documents highlighted in yellow in Appendix A.

Respectfully submitted this 26<sup>th</sup> day of March, 2013.



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Attorney for PacifiCorp

# Appendix A

**Phase I Confidential Exhibits**

**(Note: Documents with changed confidentiality designations are highlighted)**

<b>Exhibit</b>	<b>Sponsor</b>	<b>Description</b>	<b>Confidentiality</b>
1C	N/A	Supplemental Filing by PacifiCorp (2CDs)	Remains confidential
3C		ICNU Response to Bench Request No. 1 (CD)	Remains confidential
7C		ICNU's Supplemental Response to Bench Request No. 1 (2CDs)	Remains confidential
15C		PacifiCorp's Response to Bench Request No. 3 (CD)	Remains confidential
RPR-3C	Staff	PacifiCorp's Response to Staff Data Request No. 163	Remains confidential
RPR-7C	ICNU	Excerpt from PacifiCorp's Response to ICNU Data Request No. 9.1	Remains confidential
RPR-9C		Excerpt from PacifiCorp's Response to ICNU Data Request No. 24.2	Remains confidential
BNW-14C	Staff	PacifiCorp's Response to Staff Data Request No. 65	Remains confidential
GND-6C	Gregory N. Duvall	Allocation of Renewable Energy Credits	Remains confidential
GND-8C		Dynamic Scheduling Request	Remains confidential
GND-12C	Staff	PacifiCorp's Response to ICNU Data Request No. 1.33	Remains confidential
GND-13C		PacifiCorp's Response to ICNU Data Request No. 9.7	Remains confidential
GND-23C	Public Counsel	PacifiCorp's Response to PC Data Request No. 96	Remains confidential
GND-24C		PacifiCorp's Response to PC Data Request No. 97	Remains confidential
GND-25C		PacifiCorp's Response to PC Data Request No. 157	Remains confidential
GND-28C		PacifiCorp's Response to PC Data Request No. 178	Remains confidential
GND-29C		PacifiCorp's Response to ICNU Data Request No. 13.7	Remains confidential
GND-33C	ICNU	PacifiCorp's Response to ICNU Data Request No. 1.17	Remains confidential
GND-37C		PacifiCorp's Response to ICNU Data Request No. 26.26	Remains confidential
GND-38C		PacifiCorp's Response to ICNU Data Request No. 26.28	Remains confidential
GND-42C		PacifiCorp's Response to ICNU Data Request No. 26.44	Remains confidential
GND-51C		PacifiCorp's Response to ICNU Data Request No. 27.1	Remains confidential
GND-52C		PacifiCorp's Response to ICNU Data Request No. 27.2	Remains confidential
RBD-7C	R. Bryce Dalley	Renewable Energy Credit Revenue Calculation	Remains confidential

RBD-18C	Public Counsel	PacifiCorp's Response to PC Data Request No. 95	Remains confidential
RBD-19C		PacifiCorp's Response to PC Data Request No. 140	Remains confidential
RF-2C	Ryan Fuller	Illustrative Example of Repairs Deduction	Remains confidential
RF-3C		Repairs Deduction by Year	Remains confidential
EDW-5C	Erich D. Wilson	2009 Merit Analysis	Remains confidential
EDW-10C	Public Counsel	PacifiCorp's Response to PC Data Request No. 73	Remains confidential
EDW-15C		PacifiCorp's Response to PC Data Request No. 26	Remains confidential
MDF-1CT	Michael D. Foisy	Pre-filed Responsive Testimony of Michael D. Foisy	Remains confidential
MDF-3C		Attachment to PacifiCorp's Response to ICNU Data Request No. 2.14	Remains confidential
APB-1CT	Alan P. Buckley	Pre-filed Responsive Testimony of Alan P. Buckley	Remains confidential
APB-3C		SCL Stateline Adjustment	Remains confidential
APB-4C		SMUD Contract Shaping Adjustment	Remains confidential
APB-5C		Colstrip Outage Adjustment	Remains confidential
APB-17C		Avista Response to Staff Data Request No. 121 in Docket UE-100467	Remains confidential
GRM-1CT	Greg Meyer	Pre-filed Responsive Testimony of Greg Meyer	Remains confidential
RJF-1CT	Randall J. Falkenberg	Pre-filed Responsive Testimony of Randall J. Falkenberg	Remains confidential
RJF-3C		Arbitrage Profits PACW 2006-2009	Remains confidential
RJF-6C		GRID Transmission Topography	Remains confidential
RJF-7C		Confidential PacifiCorp Data Responses	Remains confidential
RJF-8CT		Cross-Answering Testimony of Randall J. Falkenberg	Remains confidential
N/A	N/A	Transcript – Confidential Vol. 6	All pages remain confidential except the following pages: Pages 622, 625-628, and 633.
N/A	Public Counsel	Initial Post-Hearing Brief	All pages remain confidential except for page 37.
	Staff	Initial Post-Hearing Brief	Remains confidential
	Public Counsel	Reply Brief	Remains confidential

**Phase II Confidential Exhibits**

**(Note: Documents with changed confidentiality designations are highlighted)**

<b>Exhibit</b>	<b>Sponsor</b>	<b>Description</b>	<b>Confidentiality</b>
N/A	PacifiCorp	Confidential Compliance Filing re: compliance with paragraphs 206, 208, and 384 of Order 06 (5-24-11)	Remains confidential
N/A	Staff	Staff's Approach for Allocating RECs from Donald T. Trotter (5-24-11)	Remains confidential
16C	N/A	PacifiCorp's Response to Bench Requests 4 through 8 including CD with confidential attachments 4 and 7	Remains confidential
ALK-2CT	Andrea L. Kelly	Pre-filed Direct Testimony of Andrea L. Kelly	No longer confidential
SJK-1CT	Stacey J. Kusters	Pre-filed Direct Testimony of Stacey J. Kusters	Remains confidential
SJK-2C		CY 2009 Renewable Energy Credits – Revenue	Remains confidential
SJK-3C		CY 2010 Renewable Energy Credits – Revenue	Remains confidential
SJK-4C		Forecast of REC Sales Revenue	Remains confidential
SJK-6C		CY 2010 Renewable Energy Credits	Remains confidential
SJK-7C	Staff	PacifiCorp's Response to Staff Data Request No. 170	Remains confidential
SKJ-10C		Excerpt from PacifiCorp's REC Report for the Quarter ending 3/31/11	Remains confidential
RBD-27C	R. Bryce Dalley	Renewable Energy Credit Tracking Mechanism	Remains confidential
RBD-28CT		Pre-filed Rebuttal Testimony of R. Bryce Dalley	<p>Pages 3, 6, 12-17, and 20 are no longer confidential.</p> <p>Page 18, lines 4, 11 &amp; 12 are no longer confidential.</p> <p>Page 18, lines 19, 20, and 21 are no longer confidential with the exception of the percentages, which remain confidential.</p>



			Page 19, the percentage on line 1 remains confidential; lines 3-7 are no longer confidential.
RBD-29C		Correction of WUTC Staff's Position	No longer confidential
RBD-30C		Correction of ICNU/Public Counsel's Position	No longer confidential
KHB-7CT	Kathryn H. Breda	Pre-filed Responsive Testimony of Kathryn H. Breda	Pages 2, 8, 9, 11, and 15 are no longer confidential.  Page 12 remains confidential.
KHB-8C		Calculation of Washington Renewable Energy Credit Revenues for 2008 and 2010	Everything remains confidential except page 1, lines 1-8.
KHB-9TC		Pre-filed Cross-Answering Testimony of Kathryn H. Breda	No longer confidential.
KHB-10C		Reconciliation between Parties Calculation of Washington REC Revenue for 2009 and 2010	Page 1 is no longer confidential. Page 2 remains confidential.
DWS-5CT	Donald W. Schoenbeck	Pre-filed Responsive Testimony of Donald W. Schoenbeck	Pages 2 and 3 are no longer confidential.  Page 4, lines 20-24 are no longer confidential; other confidential material remains confidential.  Page 5, line 1 is no longer confidential; other confidential material remains confidential.  Page 7, lines 8-9 are no longer confidential.
DWS-6C		Source of 2009 RECs	Confidential except page 6, lines 13 through 15 are no longer confidential.

N/A	Staff	Initial Post-Hearing Brief	<p>Pages 1, 3-4, 15-16, and 19-20 are no longer confidential.</p> <p>Page 17, ¶ 54 remains confidential.</p> <p>Page 18 is no longer confidential except the numbers in the second line of footnote 74 remain confidential.</p>
	Public Counsel	Initial Post-Hearing Brief	<p>Page 16 remains confidential.</p> <p>Pages 24-26 are no longer confidential.</p> <p>Page 27 remains confidential.</p>
	ICNU	Initial Post-Hearing Brief	<p>Pages 4, 5, 16, and 20 are no longer confidential.</p> <p>Page 17, ¶ 32 remains confidential.</p> <p>Pages 17-18, ¶ 33 is no longer confidential.</p>

	PacifiCorp	Initial Post-Hearing Brief	Pages 3, 5, 14-17, 20, and 37 are no longer confidential.  Pages 38 and 39, everything is no longer confidential except the percentages other than 100 percent (100 percent no longer confidential).
N/A	Staff	Reply Brief	Pages 19-20 remain confidential.  Pages 21-22 no longer confidential.
	Public Counsel	Reply Brief	No longer confidential
	PacifiCorp	Reply Brief	No longer confidential
N/A	PacifiCorp	Compliance Filing—October 31, 2012	Remains confidential
		Compliance Filing—December 31, 2012	Remains confidential
		Compliance Filing—January 16, 2013	Remains confidential
	Joint Parties	Compliance Filing—February 28, 2013	Remains confidential

# **Appendix B**

1 **Q. Are you the same Andrea L. Kelly that previously provided testimony in this**  
2 **docket?**

3 A. Yes.

4 **Purpose and Summary of Testimony**

5 **Q. What is the purpose of your rebuttal testimony?**

6 A. My rebuttal testimony responds to the direct testimony of Commission Staff  
7 (Staff) witness Kathryn H. Breda and the direct testimony of Industrial Customers  
8 of Northwest Utilities and Public Counsel (ICNU/PC) joint witness Donald W.  
9 Schoenbeck. Specifically, my testimony:

- 10 • Demonstrates that Staff's and ICNU/PC's proposals are one-sided and  
11 inappropriately isolate one cost element from prior periods without  
12 regard for the Company's overall earnings levels;
- 13 • Discusses the negative policy ramifications associated with adoption  
14 of Staff's or ICNU/PC's proposals; and
- 15 • Responds to Staff's and ICNU/PC's unsupported recommendation to  
16 alter the design of the tracking mechanism.

17 **Q. Are there other Company witnesses sponsoring rebuttal testimony?**

18 A. Yes. Company witnesses Stacey J. Kusters and R. Bryce Dalley are also  
19 sponsoring rebuttal testimony.

20 **Q. Does your testimony address the legal definition of retroactive ratemaking?**

21 A. No. My direct and rebuttal testimony do not address the legal definition of  
22 retroactive ratemaking. The Company's post-hearing brief will outline the legal  
23 prohibitions barring adoption of Staff's and PC/ICNU's proposals. Irrespective of

1 the Commission's legal determination on retroactive ratemaking, however, my  
2 testimony demonstrates why a decision to credit to customers additional REC  
3 revenues from 2009 and 2010 is poor policy and would further exacerbate an  
4 already challenging regulatory and business climate for the Company in  
5 Washington.

6 **Q. What are the most troubling aspects of the parties' proposals?**

7 A. The proposals of Staff and ICNU/PC cherry-pick cost and revenue elements that  
8 were set in prior proceedings and seek dollar-for-dollar true-up of these elements  
9 years later without regard to the fact that the Company significantly under earned  
10 throughout the entire period in question. These proposals are inconsistent with  
11 fundamental tenets of ratemaking. If adopted, they could also undermine the  
12 settlement process and result in full litigation of all rate cases. These problems  
13 are compounded by the fact that Staff and ICNU/PC have attempted to expand the  
14 scope of this proceeding to increase the potential REC credit. Staff's proposal in  
15 particular continues to be a moving target in this regard.

16 **Q. Please elaborate on your first concern.**

17 A. Staff's testimony acknowledges that since Docket UE-080220, the Commission  
18 has set rates for the Company using a forecast level of revenues from renewable  
19 energy credit (REC) sales for the rate effective period.<sup>1</sup> This is consistent with  
20 the practice of the Commission to utilize a forecast of net power costs for the rate  
21 effective period. It is uncontroverted that the Company used a forecast REC  
22 revenue level for the 12-months ending June 2008 in Docket UE-080220 and used

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<sup>1</sup> *Wash. Util. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Exhibit No. \_\_\_ (KHB-7TC), page 11, lines 3 and 4.

1 a forecast REC revenue level for calendar year 2010 in Docket UE-090205.

2 Notwithstanding this history, the proposals of Staff and ICNU/PC are  
3 premised on the argument that 2009 REC revenue levels should be *re-established*  
4 in this proceeding based on a 2009 historic actual level and credited to customers  
5 through a balancing account. On top of this, the parties also propose to capture  
6 the actual levels of 2010 revenues through this proceeding, even though 2010 is  
7 neither the test period nor the rate effective period in this proceeding. This results  
8 in the confiscation of three years of REC revenues in a single rate case  
9 proceeding—the historic test year, the forecast rate period and the time period in  
10 between. There is certainly no other cost or revenue element in this rate case that  
11 is triple-counted in this manner.

12 **Q. Aside from the unfairness of these proposals as applied to this case, do you**  
13 **have broader policy concerns regarding these proposals?**

14 A. Yes. If the Commission were to make the policy changes required to adopt  
15 Staff's or ICNU/PC's proposals, parties could thereafter cherry-pick revenue and  
16 cost elements from prior cases and attempt to true-up discrepancies from  
17 historical periods in a one-sided manner that picks up only cost-savings but not  
18 offsetting cost increases. It would also establish precedent for analyzing isolated  
19 elements of a utility's costs and revenues without regard to the overall level of  
20 earnings of the utility.

21 **Q. How is this approach one-sided?**

22 A. Establishing a combined historic and forecast dollar-for-dollar balancing account  
23 for REC revenues generated in 2009 and 2010 and forecast for 2011 would never

1 be acceptable to parties if the same logic was applied to costs. This would be the  
2 equivalent of the Company proposing in this docket to establish a dollar-for-dollar  
3 balancing account for differences between forecast and actual net power costs  
4 from Docket UE-080220 and Docket UE-090205, simultaneously with  
5 establishing a new net power cost baseline in rates and a dollar-for-dollar  
6 balancing account for the rate effective period and all periods going forward.  
7 Given the Commission's rejection of the Company's proposal for a power cost  
8 adjustment (PCA) mechanism in Docket UE-080220 and the inclusion of sharing  
9 bands in the PCA's of Puget Sound Energy and Avista, it seems highly unlikely  
10 that this "triple-count" proposal would be acceptable to parties and adopted by the  
11 Commission. Yet, this is the precise proposal advocated for REC revenues in this  
12 proceeding.

13 **Q. Are there any clear limitations on the policy changes implicated by Staff's**  
14 **and ICNU/PC's proposals?**

15 A. No, and this raises the question: If one cost element in a rate case is ultimately  
16 different from the actual cost in the rate effective period, will parties be able to  
17 seek to true that up in a future rate case? There will always be differences in costs  
18 and revenues between what was used to set rates and what was actually  
19 experienced in the rate effective period.

20 **Q. How should the Commission address the Company's under forecast of REC**  
21 **revenues in 2009 and 2010?**

22 A. The question that should be before this Commission is whether these forecast  
23 differences unfairly benefitted the Company. The Company acknowledges that



1 the forecast of REC revenues in rates for 2009 and 2010 were far different than  
2 the actual amount ultimately realized. As discussed later in my testimony, no  
3 party challenged these forecasts at the time or sought deferred accounting. The  
4 Commission can assess whether these differences were out of balance by looking  
5 at the Company's overall return on equity for the relevant period, not by  
6 evaluating one cost element in isolation. And, if the Commission concludes that  
7 the Company is over-earning, there are established processes and procedures for  
8 handling these circumstances on a forward-looking basis.

9 **Q. If the Commission decides to credit the favorable variance in actual vs.**  
10 **forecast REC revenues from 2009 and 2010 to customers, is there an**  
11 **offsetting unfavorable variance in actual vs. forecast costs from 2009 and**  
12 **2010 that should be considered?**

13 A. Yes. As detailed in my Exhibit No. \_\_\_ (ALK-3), in both 2009 and 2010, actual  
14 hydro conditions were less favorable than the level included in rates. In 2009,  
15 hydro generation was approximately 105 average megawatts (aMW) below the  
16 hydro generation included in the net power cost study in Docket UE-080220 and  
17 in 2010 hydro generation was approximately 23 aMW below the hydro generation  
18 included in the net power cost study in Docket UE-090205. The Washington-  
19 allocated cost to the Company of this lower hydro generation, priced at market,  
20 was \$7.9 million in 2009 and \$2.4 million in 2010. Recognition of these costs is  
21 consistent with Commission precedent as noted in Staff's testimony related to the  
22 Hydro Deferral.<sup>2</sup> It is also consistent with Staff's testimony in this proceeding

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<sup>2</sup> *Wash. Util. & Transp. Comm'n v. PacifiCorp*, Docket UE 100749, Exhibit No. \_\_\_ (KHB-7TC), page 4, lines 13-16.

1 that an accounting petition is not required for the Commission to deal with REC  
2 revenues or additional power costs related to the test period.<sup>3</sup>

3 **Q. Did the Company over-earn in 2009 and 2010?**

4 A. No. As I stated in my direct testimony, the Company's overall return on equity  
5 during 2009 was 5.28 percent and for 2010 was 6.69 percent. No party has  
6 contested these facts.

7 **Q. Have the parties presented any analysis of the financial consequences to the  
8 Company of retroactively crediting 2009 and 2010 REC revenues to  
9 customers in 2011, on top of 2011 forecast REC revenues?**

10 A. No. In fact, Staff's testimony is dismissive of the need to consider the financial  
11 impact of its proposal on the Company. This is troubling given Staff's duty to  
12 balance the interests of customers and shareholders. As discussed in the testimony  
13 of Mr. Dalley, the proposals of Staff and ICNU/PC would reduce the Company's  
14 earnings in the rate effective period of this proceeding by approximately 300 basis  
15 points. While no party has considered or analyzed this impact, a rate change of  
16 the magnitude proposed in this proceeding should not be ordered without full  
17 consideration of the Company's earnings.

18 **Q. Please discuss your concerns regarding this proceeding's impact on future  
19 settlement agreements.**

20 A. As I stated in my direct testimony, during the course of settlement negotiations in  
21 Docket UE-090205, the parties proposed and the Company rejected the inclusion  
22 of a REC revenue balancing account as part of that settlement. No party contests  
23 this fact. Now, two years later, the Company is faced with a retroactive

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<sup>3</sup> *Id.* at page 14, lines 19-23.

1 imposition of a REC revenue balancing account without the ability to take any  
2 actions with respect to the other elements of the Stipulation. To provide  
3 perspective, the magnitude of Staff's and ICNU/PC's recommended credit to  
4 customers in this proceeding exceeds the entire rate increase that was authorized  
5 in the Stipulation in Docket UE-090205.

6 **Q. Is there an additional concern?**

7 A. Yes. Although Staff's testimony acknowledges that \$576,254 of Washington-  
8 allocated REC revenue was included in the Company's filing in Docket UE-  
9 080220 for the 12-months ending June 2008, it refuses to recognize this level in  
10 its adjustment in this proceeding. This approach is inconsistent with the credit of  
11 \$657,755 recognized in Staff's adjustment related to the forecast of 2010  
12 Washington-allocated REC revenues included in rates in Docket UE-090205.

13 **Q. What is Staff's justification for this position?**

14 A. Staff justifies this unbalanced approach on the basis that the Stipulation in Docket  
15 UE-080220 was a black box settlement. This approach attempts to further  
16 penalize the Company for reaching settlement in a prior docket.

17 **Q. Please discuss your concerns with the ever-changing nature of Staff's  
18 proposals in this docket.**

19 A. As discussed in detail in the rebuttal testimony of Mr. Dalley, Staff's position in  
20 this case has been a moving target. In the first phase of this proceeding, Staff  
21 accepted the allocation of revenues to Washington based on the method that has  
22 been used since 2009 for reporting of REC revenues and for setting the REC  
23 revenue forecast in rates.

1           In its May 24, 2011 pleading filed with the Commission, Staff proposed a  
2           second approach, changing the allocation methodology to apply the methodology  
3           that the Company developed in 2011 for a going-forward REC tracker  
4           mechanism. This increases the Washington-allocated REC revenues for 2009 by  
5           approximately \$1.6 million and for 2010 by approximately \$2.1 million as  
6           compared to the method originally accepted and used by Staff.<sup>4</sup>

7           In its September 9, 2011 direct testimony, Staff proposes a third approach,  
8           mixing and matching Staff's first two methods. Staff's latest approach actually  
9           includes some REC revenues from RECs generated in 2008. Staff admits that this  
10          is intentional and that the exclusion of 2008 REC revenues from its proposal in  
11          May was "inadvertent". Staff's new proposal further increases the REC revenues  
12          for 2009 by approximately \$270,000 and for 2010 by approximately \$409,000.<sup>5</sup>  
13          In contrast, ICNU/PC's witness acknowledges that REC revenues from 2008  
14          vintage RECs are not appropriately included in 2009 or 2010 REC revenues.

15          Staff offers no rationale for these changes. They appear to be designed to  
16          produce the largest REC credit possible under the circumstances, or to punish the  
17          Company, or both.

18   **Q.    Is there also a moving target with respect to Staff's position on the tracking**  
19   **mechanism?**

20   A.    Yes. Only through discovery did the Company learn that Staff now contends that  
21          the \$4.8 million currently being returned to customers is related to 2009 REC

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<sup>4</sup> 2010 amount reflects the variance between Washington's allocated share of 2010 booked revenues and the amount proposed by Staff in its May 24, 2011 filing.

<sup>5</sup> 2010 variance reflects total Washington-allocated REC revenue prior to offset for amount included in rates.

1 revenues rather than related to forecast REC revenues for the rate effective period  
2 beginning April 2011. As noted in my direct testimony, the REC revenue credit  
3 in the balancing account is tied to the forecast of net power costs for the rate  
4 effective period – April 3, 2011 through April 2, 2012. This is also noted in the  
5 Order stating: “At the end of the rate year, PacifiCorp will be required to submit a  
6 full accounting of REC proceeds actually received during the preceding 12  
7 months.” (paragraph 205) Staff does not contest this statement in testimony, yet  
8 its response to a Company data request surfaced this new position for the first  
9 time. This new position is also in conflict with Staff’s own recommendation to  
10 “change” the REC tracking mechanism from a forecast with true-up to a historical  
11 mechanism. The Commission should not allow Staff to rely on this new argument  
12 for an after-the-fact justification of the retroactive, triple-counting nature of its  
13 proposal.

14 **Q. How did the Company implement the Commission’s Order 06?**

15 A. As noted above, the Company implemented the Commission’s Order to include  
16 \$4.8 million in the original tracker related to the rate effective period. This is also  
17 how the Company reflected the Order’s requirements on its financial books. This  
18 interpretation is based on two key factors. First, as noted in the Company’s  
19 testimony and briefs, the \$4.8 million was related to the level of forecast REC  
20 revenues for the rate effective period beginning April 2011. Second, the  
21 Commission’s ordering paragraph 205 states:

22 “At the end of the rate year, PacifiCorp will be required to submit a full  
23 accounting of REC proceeds actually received during the preceding 12  
24 months. This accounting will be considered in light of other information  
25 to determine if the amount of credits that should have been returned to

1 customers exceeds or fall short of the estimated \$4.8 million upon which  
2 the initial bill credits are based. In other words, the Commission will  
3 authorize a true-up of the initial credits that can be reconciled as credits  
4 are paid during the following 12 months.”  
5

6 This indicates that there is to be a true-up from the \$4.8 million initial credit to the  
7 amount actually received in the rate effective period. And, this forecast and true-  
8 up method is envisioned to occur for all future periods.

9 **Q. Is there another area of disagreement among the parties as to the scope of**  
10 **this proceeding?**

11 A. Yes. As noted in my direct testimony, the Company believes the Commission  
12 limits the true-up of revenue to amounts received no earlier than January 1, 2010.

13 Paragraph 207 states:

14 “We require this detailed accounting, in part, considering the disputed  
15 question of whether PacifiCorp should be required to include, in what we  
16 here describe as a tracker account, REC proceeds received during the  
17 periods after the test year, including those received during the pendency of  
18 this proceeding. Staff proposed that REC proceeds received after January  
19 1, 2010, be accounted for and established as a regulatory liability on the  
20 Company’s books, the rate treatment of which could be determined in a  
21 future proceeding. Another possible starting date for such an account  
22 might be the date on which PacifiCorp made its initial filing in this  
23 proceeding, which put the rate and accounting treatment of REC revenues  
24 in issue. Other possible dates are conceivable, including the start of the  
25 rate year. We do not finally resolve these questions in this Order. We  
26 require additional briefing on the subject, and may require additional  
27 evidence. We will establish process and schedule for this by subsequent  
28 notice.”

29 In fact, while the Order explicitly states that the starting date of the REC tracker  
30 could be later than January 1, 2010, nowhere does the Commission’s Order  
31 suggest a start date prior to January 1, 2010. Yet both Staff and ICNU/PC  
32 propose to apply the REC tracker to revenues received in 2009.

1 **Q. Does the Company agree with Staff's and ICNU/PC's proposal to change the**  
2 **REC tracking mechanism?**

3 A. No. It is important to note that no party ever challenged the Company's forecasts  
4 in 2009 and 2010 at the time they were reviewed in the general rate cases. Now,  
5 Staff applies 20/20 hindsight to criticize the Company's forecast. Notably, no  
6 party in this proceeding has taken issue with the Company's forecast for the rate  
7 effective period that was provided to parties on May 24, 2011. Neither Staff nor  
8 ICNU/PC discuss how the Company would transition from the current forecast  
9 and true-up for the rate effective period to an historical approach. Given the lack  
10 of discussion on this proposal in both Staff's and ICNU/PC's direct testimony,  
11 there is no basis for changing the REC tracker as established by the Commission  
12 in its Order.

13 **Q. Does the Company agree with Staff's and ICNU/PC's proposal to keep the**  
14 **Schedule 95 rate the same irrespective of the outcome of his proceeding?**

15 A. No. Once again, Staff and ICNU/PC present no analysis or rationale for this  
16 proposal. If the Commission decides to return REC revenues to customers for  
17 prior periods, the Company sees no reason to delay for three or four years the  
18 return of revenues to customers. As discussed by Mr. Dalley, the Company is  
19 required to record the full amount of any prior period adjustment in the financial  
20 year when the liability is created. Spreading the return of revenues over three to  
21 four years actually increases the financial burden on the Company.

1 **Q. Do Staff's and ICNU/PC's proposals threaten to increase the regulatory and**  
2 **business challenges that the Company already faces in Washington?**

3 A. Yes. As compared to PacifiCorp's five other state regulatory environments,  
4 Washington presents a unique set of challenges from the perspective of providing  
5 the Company an opportunity to recover its costs and earn its authorized rate of  
6 return. Factors contributing to these challenges include:

- 7 • Washington relies on a historic test period for setting rates, while the  
8 majority of the Company's other states utilize some form of a future  
9 test period for setting rates. Washington takes 11 months to process  
10 rate cases, which is one of the longest statutory suspension periods  
11 among the Company's jurisdictions. For this general rate case, the  
12 combination of these two practices created a 15 month lag between the  
13 end of the historic test period (2009) and the beginning of the rate  
14 effective period (April 2011). In addition, the use of an average of  
15 monthly averages for rate base means that the only assets that are  
16 reflected in rates for a full year are those in rate base by December  
17 2008, further increasing the under-recovery of costs.
- 18 • Washington is the Company's only jurisdiction without allocated  
19 service territories. This means that the Company is constantly at risk  
20 of losing customers and service territory to other consumer-owned  
21 utilities whose policies and practices are not regulated by this  
22 Commission.
- 23 • The Company's authorized return on equity, equity component and



1 return on rate base in Washington are currently the lowest of the  
2 Company's six jurisdictions.

3 • The Company's other five jurisdictions use a common inter-  
4 jurisdictional cost allocation methodology, one that this Commission  
5 rejected. This increases the Company's risk of under-recovery of its  
6 overall costs, creates a cost allocation methodology in Washington  
7 disconnected from how the Company actually operates its system on a  
8 six-state integrated basis, impedes adoption of a PCA, and impedes  
9 inclusion of cash working capital costs in rates.

10 While each of these practices and decisions were determined to be reasonable in  
11 isolation, collectively they create a business environment in Washington that is  
12 extremely challenging, one that has contributed to the Company's chronic under-  
13 earning in Washington. This makes the policy implications of this proceeding  
14 that much more important.

15 **Q. Does this conclude your rebuttal testimony?**

16 A. Yes.

1 **Q. Are you the same R. Bryce Dalley that previously provided testimony in this**  
2 **docket?**

3 A. Yes.

4 **Purpose and Summary of Testimony**

5 **Q. What is the purpose of your rebuttal testimony?**

6 A. The purpose of my testimony is to respond to the Renewable Energy Credit  
7 (REC) revenue calculations and proposals sponsored by Kathryn H. Breda for the  
8 staff of the Washington Utilities and Transportation Commission (Staff), and  
9 Donald W. Schoenbeck for the Industrial Customers of Northwest Utilities and  
10 the Public Counsel Section of the Washington State Attorney General's Office  
11 (ICNU/PC).

12 **Q. Please summarize your testimony.**

13 A. My testimony first addresses the significant earnings impact and accounting  
14 entries that would be necessary under Staff's and ICNU/PC's proposals to refund  
15 prior period REC revenues to customers. In addition, my testimony provides the  
16 following:

- 17 • A discussion of the fact that Staff and ICNU/PC now propose to  
18 include REC revenues for 2009 in addition to 2010 in the REC tracker  
19 account, even though the Commission's order does not consider time  
20 periods prior to 2010.
- 21 • A summary of the Company's method for determining Washington's  
22 allocation of historic REC revenues, a method uncontested by Staff  
23 and ICNU/PC prior to this phase of the proceeding.

- 1                   • An explanation of the allocation methodology proposed by the  
2                   Company for the rate-effective period, which was developed in 2011  
3                   in consultation with Staff and ICNU/PC.
- 4                   • A summary of how Staff's calculations of Washington's historic REC  
5                   revenue have changed three times in the course of this proceeding,  
6                   each time further increasing Washington's share of allocated revenue.
- 7                   • A discussion of the errors in the calculations outlined by Staff and  
8                   ICNU/PC in determining Washington's allocation of REC revenues,  
9                   along with the various corrections required to properly calculate  
10                  Washington's share of these revenues.

11   **Earnings Impact and Associated Accounting Entries Necessary for Prior Period**

12   **REC Revenue Refund to Customers**

13   **Q.    If the Commission determines that Washington-allocated REC revenues**  
14       **from prior periods should be returned to Washington customers, what would**  
15       **be the earnings impact to the Company?**

16   A.    In the event the Commission decides to return additional REC revenues to  
17       customers from prior periods, the financial impact on the Company's Washington  
18       earnings would be significant. Currently, 100 basis points on equity in  
19       Washington is approximately \$5.7 million.<sup>1</sup> This means that for every \$5.7  
20       million of Washington-allocated REC revenue returned to customers, the  
21       Company's Washington return on equity (ROE) would be reduced by one percent.

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<sup>1</sup> *Wash. Util. & Transp. Comm'n v. PacifiCorp*, Docket UE-111190, Exhibit No. \_\_\_ (RBD-3), page 2.2, line 68 (July 1, 2011).

1 Staff's and ICNU/PC's proposals would have the impact of reducing the  
2 Company's Washington ROE by approximately three percent (300 basis points).

3 **Q. When would this earnings reduction be reflected on the Company's financial**  
4 **records?**

5 A. Since these revenues are associated with prior fiscal periods, the Company would  
6 be required to book the associated accounting entries immediately per Financial  
7 Accounting Standards Board (FASB) Accounting Standards Codification (ASC)  
8 Topic 980 Regulated Operations. As a result, any refund of these revenues to  
9 customers would impact the Company's 2011 Washington earnings. This  
10 potential reduction to 2011 earnings would be in addition to the \$5.4 million  
11 unexpected reduction in 2011 earnings the Company was required to recognize as  
12 a result of the Commission ordered change in tax treatment related to the Chehalis  
13 regulatory assets earlier in this proceeding.<sup>2</sup>

14 **Q. Would a refund of REC revenues from prior periods allow the Company to**  
15 **earn its authorized rate of return during the rate-effective period in this**  
16 **proceeding?**

17 A. No. Since a refund of REC revenues from prior periods would need to be booked  
18 for accounting purposes in 2011, and given the rate-effective period in this  
19 proceeding began in early 2011, any refund of REC revenues from prior periods  
20 would deny the Company a reasonable opportunity to earn its authorized rate of  
21 return during the rate-effective period.

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<sup>2</sup> *Wash. Util. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Petition for Reconsideration at ¶9.

1           As part of this case, the Commission has already ordered the Company to  
2           return to customers an annual level of REC revenues on a prospective basis for  
3           the rate-effective period. The original credit to customers established by the  
4           Commission for this period is \$4.8 million. If the Commission were to order a  
5           refund of additional REC revenues from prior periods, it would effectively mean  
6           that more than an annual level of revenues is reflected in a single test year. In  
7           fact, under Staff and ICNU/PC's proposals, three years of REC revenues would  
8           be captured in one test year, while no other revenue requirement component of the  
9           case is reflected at more than an annual level.

10 **Q.    What accounting entries would have to be booked should the Commission**  
11 **rule that REC revenues from prior periods be returned to customers?**

12 A.    According to ASC Topic 980, the Company would be required to credit a  
13       regulatory liability in Federal Energy Regulatory Commission (FERC) account  
14       254 – Other Regulatory Liabilities. The offsetting entry would be a debit  
15       (reduction) to general business revenues.

16 **Inclusion of 2009 REC Revenues in the REC Tracker**

17 **Q.    Please describe Staff's and ICNU/PC's proposals with respect to 2009 REC**  
18 **revenues.**

19 A.    Staff and ICNU/PC both propose including 2009 REC revenues in the Company's  
20       REC tracker account in addition to both 2010 revenues and revenues for the rate-  
21       effective period.

1 **Q. Does Order 06 issued by the Commission in this proceeding direct a starting**  
2 **date for the REC revenue tracker account prior to 2010?**

3 A. No. Both Staff's and ICNU/PC's proposals deviate from the potential starting  
4 dates outlined by the Commission. Paragraph 207 of that order states:

5 "We require this detailed accounting, in part, considering the disputed  
6 question of whether PacifiCorp should be required to include, in what we  
7 here describe as a tracker account, REC proceeds received during the  
8 periods after the test year, including those received during the pendency of  
9 this proceeding. Staff proposed that REC proceeds received after January  
10 1, 2010, be accounted for and established as a regulatory liability on the  
11 Company's books, the rate treatment of which could be determined in a  
12 future proceeding. Another possible starting date for such an account  
13 might be the date on which PacifiCorp made its initial filing in this  
14 proceeding, which put the rate and accounting treatment of REC revenues  
15 in issue. Other possible dates are conceivable, including the start of the  
16 rate year. We do not finally resolve these questions in this Order. We  
17 require additional briefing on the subject, and may require additional  
18 evidence. We will establish process and schedule for this by subsequent  
19 notice."

20 **Q. What does the Company propose as the starting date for the REC tracker**  
21 **account?**

22 A. As discussed in the Phase II direct testimony of Company witness Andrea L.  
23 Kelly, the Company recommends the REC tracker account operate on a forward-  
24 looking basis beginning at the start of the rate-effective period. Under the  
25 Company's proposal, REC revenues for 2009 or 2010 would not be included in  
26 the REC tracker account.

1 **Q. If the Commission determines that the Company's filing date in this**  
2 **proceeding should be used as the starting date for the REC tracker account,**  
3 **what amount of Washington-allocated REC revenue would be reflected for**  
4 **2010?**

5 A. Using the Company's filing date of May 4, 2010 as the start date for the REC  
6 tracker account, approximately \$4.75 million of Washington-allocated REC  
7 revenue would be reflected in the account for 2010. This amount can be  
8 calculated by summing Washington's allocation of revenues for the months of  
9 May through December 2010, found in Company witness Stacey J. Kusters'  
10 Confidential Exhibit No.\_\_\_\_(SJK-6C) and subtracting the amount of REC  
11 revenues previously reflected in rates in 2010 of \$657,755. Ms. Kusters' exhibit  
12 and the amount previously established in rates are discussed in greater detail later  
13 in my testimony.

14 **PacifiCorp's Proposed Allocation Methodology for Prior Period REC Revenues**

15 **Q. Please describe the allocation methodology proposed by the Company to**  
16 **determine Washington's share of REC revenue for 2009 and 2010.**

17 A. As described in my Phase II direct testimony, for purposes of determining  
18 Washington share of REC revenues for 2009 and 2010, the Company applied  
19 Washington's Control Area Generation West (CAGW) allocation percentage to  
20 the REC revenues booked from the sale of RECs from west control area  
21 resources.

1 **Q. Using this methodology, what are the total Washington-allocated REC**  
2 **revenues for 2010?**

3 A. As reflected in Ms. Kusters' Confidential Exhibit No.\_\_\_\_(SJK-3C), the total  
4 Washington-allocated REC revenue is \$7,663,079 for 2010.

5 **Q Does this total reflect any reduction for REC revenues reflected in rates**  
6 **during 2010 as part of prior rate case filings?**

7 A. No. However, as outlined in Ms. Breda's testimony, in the Company's 2009 rate  
8 case, Docket UE-090205, \$657,755 of Washington-allocated REC revenues were  
9 established in rates on a forecast basis for the calendar year 2010 rate-effective  
10 period in that proceeding. Any REC revenue credit for 2010 should be reduced  
11 by this amount.

12 **Q. Is the Company's allocation of historic REC revenues consistent with prior**  
13 **reports provided to the Commission and other parties?**

14 A. Yes. As described in my Phase II direct testimony, the allocation method  
15 described above is consistent with each of the Quarterly REC Revenue Reports  
16 provided to Staff and ICNU/PC (five separate filings).<sup>3</sup> In addition, the same  
17 methodology was applied in the 2009 and 2010 Commission Basis Reports and  
18 the Company's rebuttal revenue requirement filing in this docket.

19 **Q. Has any party ever taken issue with this allocation method?**

20 A. No. Parties have not challenged this allocation methodology until Phase II of this  
21 proceeding. In fact, Staff supported this methodology earlier in this docket. In its  
22 initial post-hearing brief filed with the Commission on February 11, 2011, Staff

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<sup>3</sup> *Wash. Util. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Exhibit No.\_\_\_\_(RBD-25T), page 4, line 13 through page 5, line 14.



1 supported the Company's rebuttal calculation of REC revenues, which, as I  
2 discuss above, was calculated using this same methodology as a proxy for the  
3 forecast for the rate-effective period.<sup>4</sup> In the Company's rebuttal filing, the  
4 Company explained that it used 2009 revenues allocated in this manner as the  
5 basis for the revenues the Company expected to receive during the rate-effective  
6 period, the 12 months ending March 2013.<sup>5</sup>

7 **Q. Were Staff and other parties aware that the Company was holding RECs for**  
8 **compliance with renewable portfolio standards in Oregon and California?**

9 A. Yes. This is not a new discovery as implied in Staff's testimony. As referenced  
10 in my direct testimony, the Company provided an explanation of the disposition  
11 of RECs on a state-by-state basis in a report to Staff, PC and ICNU nearly three  
12 years ago, on December 31, 2009. The report stated:

13 "PacifiCorp does not sell Oregon's REC share allocation because that  
14 state's RPS permits unlimited REC banking for RECs generated after  
15 January 1, 2007 and the first RPS target is near-term (2011). PacifiCorp  
16 does not sell California's REC share allocation because the RPS targets  
17 for that state are already applicable. Beginning January 1, 2011, under  
18 current laws and rules, PacifiCorp will not sell Washington's REC share  
19 allocation because the first RPS target will become applicable; however,  
20 Washington RECs may be sold in the future if not needed for meeting the  
21 target and if the RECs cannot be banked." p. 3

22 **Q. Has the Company made any revisions to the calculation of 2010 Washington-**  
23 **allocated revenues as part of its rebuttal filing?**

24 A. Yes. The Company has made a minor revision to Washington's CAGW  
25 percentage for 2010 to match the allocation percentage used in the Company's

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<sup>4</sup> Staff Initial Post-Hearing Brief at ¶24 (February 11, 2011).

<sup>5</sup> PacifiCorp Initial Post-Hearing Brief at ¶62 (February 11, 2011).

1 2011 general rate case (2010 historic test period), Docket UE-111190.<sup>6</sup> The 2010  
2 Washington allocation percentage used by the Company in its Phase II direct  
3 filing is consistent with the percentage reported in the Company's 2010  
4 Commission Basis Report. However, due to the timing of that filing with the  
5 Commission, the Company was not able to incorporate a revision to the  
6 calculation of jurisdictional allocation factors as outlined by the Commission in  
7 Order 06 of this docket. In that Order, the Commission required the Company to  
8 remove temperature normalization from the commercial customer class.<sup>7</sup>  
9 Applying this ordered treatment to the 2010 jurisdictional loads increases  
10 Washington's 2010 CAGW allocation from 22.2111% to 22.4742%.

11 **Q. What is the impact on the Washington allocation of 2010 REC revenues due**  
12 **to the update of Washington's 2010 CAGW percentage?**

13 A. 2010 Washington-allocated REC revenue increases by \$90,772 from the  
14 \$7,663,079 reported in Exhibit No. \_\_\_ (SJK-3C). The updated Washington-  
15 allocated total for 2010 is \$7,753,851. This revised amount and allocation  
16 percentage is reflected in Ms. Kusters' Confidential Exhibit No. \_\_\_ (SJK-6C).  
17 This total does not reflect a reduction for the amount reflected in rates during  
18 2010 discussed above.

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<sup>6</sup> *Wash. Util. & Transp. Comm'n v. PacifiCorp*, Docket UE-111190, Exhibit No. \_\_\_ (RBD-3), page 10.2.

<sup>7</sup> *Wash. Util. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Order 06 at ¶225 (Mar. 25, 2011).

1 **PacifiCorp's Proposed Allocation Methodology for the Rate-Effective Year**  
2 **(Forward-Looking Methodology)**

3 **Q. Is the allocation methodology described above the same methodology the**  
4 **Company proposes for the rate-effective period onward?**

5 A. No. As described in my Phase II direct testimony and outlined in Confidential  
6 Exhibit No. \_\_\_(RBD-27C), the Company's proposal for the rate-effective period  
7 forward requires a more intricate approach due to complexities driven by the use  
8 of different jurisdictional allocation methodologies among the Company's states  
9 and to account for RECs that will need to be held for compliance to satisfy  
10 Washington's renewable portfolio standard (RPS) during the rate-effective period.

11 As shown on pages 2 and 4 of Confidential Exhibit No. \_\_\_(RBD-27C),  
12 this forward-looking methodology calculates Washington's share of REC revenue  
13 by first taking total RECs generated multiplied by Washington's CAGW factor.  
14 Second, eligible RECs necessary to satisfy Washington's RPS are subtracted from  
15 this total, leaving the difference as the number of Washington-allocated RECs in  
16 excess of the compliance requirement. Next, this total is multiplied by the  
17 percentage of RECs the Company was actually able to sell from its marketable  
18 pool to calculate the number of excess Washington RECs sold. This amount is  
19 then multiplied by the average price per REC to determine Washington's total  
20 REC revenue. This calculation is done separately for Washington RPS eligible  
21 and Washington RPS non-eligible RECs.

22 **Q. When was this forward-looking allocation methodology developed?**

23 A. This methodology was developed by the Company in consultation with Staff and

1 other parties during the time between the issuance of Order 06 in this proceeding  
2 on March 25, 2011 and the Company's May 24, 2011 compliance filing.

3 **Q. Should this forward-looking allocation method for the rate-effective period**  
4 **be retroactively applied to determine Washington's share of historic REC**  
5 **revenues?**

6 A. No. Using an allocation methodology developed in 2011 to retroactively  
7 determine Washington's share of revenues received by the Company in 2009 or  
8 2010 is inappropriate, since the Company does not have the option of  
9 recalculating the allocation of other cost or revenue components during those  
10 periods. As discussed earlier in my testimony, the methodology the Company has  
11 outlined to determine Washington's REC revenue allocation for 2009 and 2010  
12 was used in the Company's regulatory filings for those periods, was supported by  
13 Staff in its initial post-hearing brief, and was uncontested by all parties until Phase  
14 II of this proceeding.

15 **Staff's Proposed Allocation Methodology**

16 **Q. Please describe Staff's proposed calculation of Washington's allocation of**  
17 **2009 and 2010 historic REC revenues.**

18 A. Staff's proposal as outlined by Ms. Breda in Exhibit Nos. \_\_\_ (KHB-7TC) and  
19 (KHB-8C) first allocates Washington's share of revenues by taking the booked  
20 revenue from west control area resources and applying Washington CAGW  
21 factors for both respective years.<sup>8</sup> This methodology is consistent with

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<sup>8</sup> Staff correctly applies the updated Washington 2010 CAGW factor of 22.4742% described earlier in my testimony.

1 the Company's calculation for 2009 and 2010, and results in Washington-  
2 allocated REC revenue of \$4,939,889 for 2009 and \$7,753,851 for 2010.

3 However, in addition to allocating the booked REC revenue, Staff's  
4 proposal calculates "imputed revenue" for RECs that have been held by the  
5 Company for compliance in other jurisdictions. Staff's calculation of the imputed  
6 revenues implements a similar calculation to the forward-looking methodology  
7 proposed by the Company's for the rate-effective period.

8 Staff's revenue imputation calculation is done by first multiplying the  
9 number of RECs held for compliance by Washington's CAGW factor for each  
10 year. The result of this calculation is then multiplied by an average price realized  
11 by the Company from RECs sales based on actual transactions. Staff then  
12 multiplies this total by a percentage of actual RECs sold by the Company. Using  
13 this methodology, Staff imputes additional revenues of \$1,752,406 and  
14 \$2,467,260 for 2009 and 2010 respectively.

15 The final step in Staff's calculation is to subtract Washington-allocated  
16 REC revenue to account for the REC revenues reflected in rates during 2010. As  
17 discussed above, in the Company's 2009 rate case, Docket UE-090205, \$657,755  
18 of Washington-allocated REC revenues were established in rates on a forecast  
19 basis for the calendar year 2010 rate-effective period in that proceeding. As a  
20 result, Staff subtracts this amount from the 2010 calculated total. As shown on,  
21 line 3 of Confidential Exhibit No. \_\_\_ (RBD-29C), Staff's final total of  
22 Washington-allocated REC revenue, following the procedures discussed above, is  
23 \$6,692,295 for 2009 and \$9,563,356 for 2010.

1 **Q. Is Staff's proposed calculation consistent with its pleading filed with the**  
2 **Commission on May 24, 2011?**<sup>9</sup>

3 A. No. Staff's calculation is not the same as that reflected in Staff's Pleading.

4 **Q. Please explain how Staff's proposal varies from Staff's Pleading.**

5 A. Attachment A of Staff's Pleading outlines the calculation of 2009 and 2010  
6 Washington REC revenues using a method similar to that proposed by the  
7 Company for REC revenues for the rate-effective period. By contrast, Staff's  
8 proposal now first relies on booked revenues in 2009 and 2010, and then  
9 calculates a revenue imputation based on a method similar to Attachment A of  
10 Staff's Pleading.

11 **Q. Why has Staff changed its position with respect to the Washington allocation**  
12 **of REC revenues for 2009 and 2010?**

13 A. It is unclear why Staff's methodology has changed. Each time Staff has modified  
14 its methodology, the amount of Washington-allocated REC revenues has  
15 increased. For example, Staff's calculation of 2009 Washington-allocated REC  
16 revenue has increased from approximately \$4.8 million as supported in its initial  
17 post hearing brief filed with the Commission on February 11, 2011, to \$6.4  
18 million as included in Staff's Pleading filed with the Commission on May 24,  
19 2011, to \$6.7 million as calculated and described in Ms. Breda's testimony filed  
20 with the Commission on September 9, 2011.

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<sup>9</sup> Staff Approach for Allocating RECs, Docket UE-100749, (May 24, 2011) (Staff's Pleading).

1 **Q. If the Commission decides to use the forward-looking allocation method**  
2 **proposed by the Company for the rate-effective period to determine**  
3 **Washington's allocation of prior period revenues, is Staff's calculation**  
4 **correct?**

5 A. No. Although I strongly disagree with using an allocation method developed  
6 nearly 29 months after the beginning of 2009 to determine Washington's share of  
7 REC revenues for that period, if the Commission decides to use that methodology,  
8 several corrections need to be made to Staff's calculations.

9 **Q. Please explain the corrections necessary to accurately reflect Washington's**  
10 **allocation of REC revenues using the Company's forward-looking allocation**  
11 **method as outlined in Confidential Exhibit No. \_\_\_(RBD-27C).**

12 A. Three corrections need to be made to Staff's calculation in order to reflect  
13 Washington's allocated share of revenues using the Company's forward-looking  
14 methodology. First, Staff's calculation should apply the forward-looking  
15 methodology to all RECs, not only those the Company held for compliance.  
16 Second, Staff's calculation of non-eligible REC revenues should use all non-  
17 eligible RECs in the calculation, not just small hydro RECs as proposed by Staff.  
18 Finally, an offset to Staff's 2009 calculation should be included to reflect the  
19 amount of REC revenue in rates during that period. Each of these corrections is  
20 reflected in Confidential Exhibit No. \_\_\_(RBD-29C) and is discussed in detail  
21 below.

22 **Q. Please describe the Company's first correction to Staff's proposal.**

23 A. Staff's proposal mixes and matches two different methods. Staff proposal only

1 applies the forward-looking REC allocation method to RECs held for compliance.  
2 By consistently applying the same method to all RECs generated during 2009 and  
3 2010, the total Washington-allocated revenue is reduced by \$262,395 for 2009  
4 and \$73,456 for 2010. This correction is shown on line 6 of Confidential Exhibit  
5 No.\_\_(RBD-29C). Attachment A of Staff's Pleading is consistent with this  
6 approach to the calculation.

7 **Q. What is the Company's second correction to Staff's proposal?**

8 A. Staff's revenue imputation calculation for non-eligible RECs includes only small  
9 hydro RECs in the calculation of RECs generated, held for compliance, sold, and  
10 retained. The Company believes that all non-eligible RECs generated should be  
11 included in this calculation, consistent with the calculation for eligible RECs.  
12 This correction reduces the 2009 and 2010 Washington-allocated REC revenue by  
13 \$5,266 for 2009 and \$116,261 for 2010. This calculation is shown on line 7 of  
14 Confidential Exhibit No.\_\_(RBD-29C).

15 **Q. Please describe the Company's final correction to Staff's proposed**  
16 **calculation.**

17 A. The Company's final correction to Staff's calculation is to include an offset to the  
18 2009 calculated Washington-allocated total for the amount of REC revenues  
19 previously established in rates for that year. If the Commission determines that  
20 2009 and 2010 REC revenue should be returned to customers, the amount of  
21 forecast REC revenues included in rates during these years through past rate case  
22 filings should be reflected as a reduction. Staff has proposed to include an offset  
23 of \$657,755 for REC revenues in rates in 2010 from UE-090205, but has not



1 included an offset for the amount included in rates through the Company's 2008  
2 rate case filing in Docket UE-080220. In that docket, which used a historic test  
3 year for the 12-months ending June 2007, the Company included \$576,254 of  
4 forecast REC revenues.<sup>10</sup> As a result, line 8 of Confidential Exhibit  
5 No.\_\_\_\_(RBD-29C) reflects this amount as a reduction to Staff's calculated 2009  
6 amount.

7 **Q. What is the overall impact of the Company's corrections to Staff's proposal?**

8 A. The total corrections outlined above reduce Staff's calculation by \$843,916 for  
9 2009 and \$189,717 for 2010. If the Commission decides it is appropriate to use  
10 the forward-looking allocation method to determine Washington's 2009 and 2010  
11 REC revenue, the appropriate level of RECs, including offsets for the amount in  
12 rates is \$5,848,379 for 2009 and \$9,373,639 for 2010. These revised totals are  
13 shown on line 11 of Confidential Exhibit No.\_\_\_\_(RBD-29C).

14 **ICNU/PC's Proposed Allocation Methodology**

15 **Q. Please describe ICNU/PC's proposed calculation of Washington's allocation**  
16 **of 2009 and 2010 historic REC revenues.**

17 A. ICNU/PC's proposal as outlined by Mr. Schoenbeck in Exhibit Nos.\_\_\_\_(DWS-  
18 5CT) and (DWS-6C) calculates Washington's share of 2009 and 2010 REC  
19 revenue using a similar approach to the Company's forward-looking allocation  
20 methodology discussed above. As shown on line 1 of Confidential Exhibit  
21 No.\_\_\_\_(RBD-30C), ICNU/PC's final total of Washington-allocated REC revenue  
22 is \$6,516,349 for 2009 and \$10,757,714 for 2010.

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<sup>10</sup> *Wash. Util. & Transp. Comm'n v. PacifiCorp*, Docket UE-080220, Exhibit No.\_\_\_\_(RBD-3), page 3.5.1, (February 6, 2008).

1 **Q. Do you agree with Mr. Schoenbeck's calculations?**

2 A. No. Consistent with my criticism of Staff's proposal above, I do not believe it is  
3 appropriate to apply an allocation methodology developed in 2011 to REC  
4 revenues for 2009 and 2010. However, if the Commission determines that using a  
5 forward-looking allocation methodology to determine the 2009 and 2010  
6 Washington-allocated REC revenues is appropriate, several corrections need to be  
7 made to ICNU/PC's calculations.

8 **Q. Please explain the corrections necessary to accurately reflect Washington's**  
9 **allocation of REC revenues using the forward-looking allocation**  
10 **methodology discussed above.**

11 A. There are four corrections that need to be made to Mr. Schoenbeck's calculations.  
12 Each of these corrections is outlined in Confidential Exhibit No.\_\_\_\_(RBD-30C).  
13 First, Washington's CAGW factor for 2010 needs to be updated as discussed  
14 earlier in my testimony. Second, the number of non-eligible RECs sold in 2009  
15 as reflected in the 2009 revenue calculation needs to be corrected. Third, the  
16 calculation of revenues for RECs held for compliance needs to be adjusted to  
17 reflect the percentage of RECs the Company was actually able to sell from its  
18 marketable pool for each year, rather than assuming 100 percent of these RECs  
19 could have been sold. Finally, an offset for the amount of REC revenues  
20 previously established in rates should be deducted from the 2009 and 2010 totals.

21 **Q. Please describe the Company's first correction to ICNU/PC's calculation of**  
22 **REC revenues.**

23 A. Mr. Schoenbeck uses the 2010 CAGW factor as filed by the Company in its Phase

1 II direct testimony and exhibits. As explained earlier in my testimony, the 2010  
2 CAGW factor needs to be updated to reflect the Commission ordered removal of  
3 the temperature normalization of the commercial customer class. This correction  
4 increases 2010 Washington-allocated REC revenue by \$127,430. This amount is  
5 shown on line 4 of Confidential Exhibit No. \_\_\_(RBD-30C).

6 **Q. Please describe the Company's second correction to ICNU/PC's calculation**  
7 **of REC revenues.**

8 A. The Company's second correction to Mr. Schoenbeck's calculation is to include  
9 the actual number of Washington non-eligible RECs sold in the calculation of  
10 2009 REC revenues. Confidential Exhibit No. \_\_\_(DWS-6C) understates the  
11 number of actual non-eligible RECs sold during 2009 by 863. This correction  
12 increases 2009 Washington-allocated REC revenue by \$2,157. This amount is  
13 shown on line 5 of Confidential Exhibit No. \_\_\_(RBD-30C).

14 **Q. Please describe the Company's third correction to ICNU/PC's calculation of**  
15 **REC revenues.**

16 A. Mr. Schoenbeck's calculation assumes the Company could have sold 100 percent  
17 of RECs it held for compliance during 2009 and 2010. This is not a valid  
18 assumption, particularly for the Company's Washington RPS non-eligible RECs.  
19 In 2009, the Company sold [REDACTED] of its marketable west control area  
20 Washington RPS eligible RECs and [REDACTED] of its marketable west control  
21 area Washington RPS non-eligible RECs. In 2010, the Company sold [REDACTED]  
22 [REDACTED] of its marketable west control area Washington RPS eligible RECs and

1 [REDACTED] of its west control area Washington RPS marketable non-eligible  
2 RECs.

3 To correct Mr. Schoenbeck's calculation, these percentages need to be  
4 applied to determine the number of RECs held for compliance that could have  
5 been sold. As shown on line 6 of Confidential Exhibit No. \_\_\_ (RBD-30C),  
6 applying these percentages reduces Mr. Schoenbeck's REC revenue calculation  
7 by \$94,449 in 2009 and \$853,974 in 2010.

8 **Q. Please describe the Company's final correction to ICNU/PC's calculation of**  
9 **REC revenues.**

10 A. Consistent with the Company's final correction to Staff's proposal, the  
11 Company's final correction to ICNU/PC's calculation is to include an offset to the  
12 2009 and 2010 calculated REC revenue totals for the amount of REC revenues  
13 previously established in rates in those years. If the Commission determines that  
14 2009 and 2010 REC revenue should be returned to customers, the amount of REC  
15 revenues included in rates during these years through past rate case filings should  
16 be reflected as a reduction.

17 Line 7 of Confidential Exhibit No. \_\_\_ (RBD-30C) reflects the level of  
18 Washington-allocated REC revenue included in rates in 2009 and 2010. As  
19 discussed above, \$576,254 of forecast Washington-allocated REC revenues were  
20 reflected in rates in 2009 based on the Company's 2008 rate case filing, UE-  
21 080220 and \$657,755 of forecast Washington-allocated REC revenues were  
22 included in rates in 2010 based on the Company's 2009 rate case filing, Docket

1 UE-090205. As a result, these amounts are included as reductions to ICNU/PC's  
2 calculated totals.

3 **Q. Please explain the rounding variance amount shown on line 8 of Confidential**  
4 **Exhibit No.\_\_(RBD-30C).**

5 A. This variance represents the rounding difference between the Company's  
6 correction of Staff's calculations of REC revenue and the Company's correction  
7 of ICNU/PC's calculations. This variance of \$576 in 2009 and \$224 in 2010 is  
8 attributable to the use of rounded percentages and prices. By including this  
9 rounding variance on line 8 of this exhibit, the final REC revenue amounts for  
10 Staff and ICNU/PC, as corrected by the Company, are the same.

11 **Q. What is the overall impact of the Company's corrections to ICNU/PC's**  
12 **proposal?**

13 A. The total corrections outlined above reduce ICNU/PC's calculation by \$667,970  
14 in 2009 and \$1,384,075 in 2010. If the Commission decides it is appropriate to  
15 use the forward-looking allocation method to determine Washington's 2009 and  
16 2010 REC revenues, the appropriate level of RECs, including offsets for the  
17 amount in rates is \$5,848,379 for 2009 and \$9,373,639 for 2010. These revised  
18 totals are shown on line 11 of Confidential Exhibit No.\_\_(RBD-30C).

19 **Q. Does this conclude your testimony?**

20 A. Yes.

<b>Analysis of WUTC Staff's Position</b>							
1	<b>Total REC Rev. Before Credit for Amount in Rates</b>	\$	<b>6,692,295</b>	\$	<b>10,221,111</b>	\$	<b>16,913,406</b>
2	Less Amounts in Rates for 2010	\$	-	\$	(657,755)	\$	(657,755)
3	<b>Total REC Revenues Per Exhibit No. ___(KHB-8C)</b>	\$	<b>6,692,295</b>	\$	<b>9,563,356</b>	\$	<b>16,255,651</b>
4							
5	<b>Corrections:</b>						
6	Apply REC Vintage Method for All RECs	\$	(262,395)	\$	(73,456)	\$	(335,852)
7	Use All Non-Eligible RECs, not only Small Hydro	\$	(5,266)	\$	(116,261)	\$	(121,527)
8	Include Offset for REC Revenues in Rates in 2009	\$	(576,254)	\$	-	\$	(576,254)
9	<b>Total Corrections to Staff's Calculation</b>	\$	<b>(843,916)</b>	\$	<b>(189,717)</b>	\$	<b>(1,033,633)</b>
10							
11	<b>Total REC Revenues with Corrections</b>	\$	<b>5,848,379</b>	\$	<b>9,373,639</b>	\$	<b>15,222,019</b>

<b>Analysis of ICNU/Public Counsel's Position</b>							
1	<b>Total REC Revenues Per Exhibit No. ___(DWS-6C)</b>	\$	<b>6,516,349</b>	\$	<b>10,757,714</b>	\$	<b>17,274,063</b>
2							
3	<b>Corrections:</b>						
4	Correct CAGW Allocation Factor for 2010	\$	-	\$	127,430	\$	127,430
5	Include Correct Non-Eligible RECs Sold in 2009	\$	2,157	\$	-	\$	2,157
6	Apply Actual % Sold to RECs Held For Compliance	\$	(94,449)	\$	(853,974)	\$	(948,423)
7	Include Offset for REC Revenues in Rates	\$	(576,254)	\$	(657,755)	\$	(1,234,009)
8	Rounding Variance From RBD-29 Staff Summary	\$	576	\$	224	\$	800
9	<b>Total Corrections to ICNU/PC's Calculation</b>	\$	<b>(667,970)</b>	\$	<b>(1,384,075)</b>	\$	<b>(2,052,045)</b>
10							
11	<b>Total REC Revenues with Corrections</b>	\$	<b>5,848,379</b>	\$	<b>9,373,639</b>	\$	<b>15,222,019</b>

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

Complainant,

vs.

PACIFICORP d.b.a. PACIFIC POWER,

Respondent.

**DOCKET UE-100749  
PHASE 2**

**PACIFICORP'S  
INITIAL POST-HEARING BRIEF  
ON RATE TREATMENT FOR  
RENEWABLE ENERGY CREDIT REVENUES**

**CONFIDENTIAL**

**November 4, 2011**



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## I. INTRODUCTION

1. The central issue presented in Phase 2 of this proceeding is whether the Washington Utilities and Transportation Commission (WUTC or Commission) can and should order a retroactive rate credit for actual and imputed revenues from PacifiCorp's 2009 and 2010 renewable energy credit (REC) sales. The Commission's laws, rules, and policies provide a list of reasons why the Commission should not do so, including the rule against retroactive ratemaking, the filed rate doctrine, the prohibition on collateral attacks, and the policy against single-issue ratemaking.
2. In addition, the Commission has recognized that it has discretion to determine the rate treatment of REC revenues taking into account equitable considerations, such as the need to encourage utilities to take actions that benefit both utility customers and shareholders. These equitable considerations, especially the fact that the Company did not earn its authorized returns in either 2009 or 2010 even taking into account increased REC revenues, support rejection of the retroactive adjustments and application of a REC tracking mechanism on a forward-looking basis only.
3. If the Commission approves a retroactive rate credit for REC revenues despite all of these factors, the Company requests that the Commission mitigate the negative impact of such an order by offsetting the rate credit with the increase in net power costs (NPC) during 2009 and 2010 associated with poor hydro conditions. The Company also urges the Commission to adopt the Company's approach to REC revenue allocation, which produces a balanced and fair result.
4. The rate order in Phase 1 of this case approved a revenue requirement increase of \$38 million, less \$4.8 million for the rate year (12 months ending March 2012) REC revenue

credit.<sup>1</sup> The Commission then clarified its order, reducing it by \$4.5 million to account for an error in the calculation of NPC in the order.<sup>2</sup> As the Company noted in its request for reconsideration, the change in tax treatment of the Chehalis regulatory asset in the order caused a further, unexpected \$5.4 million decrease to 2011 earnings.<sup>3</sup> All of this reduced the effective rate increase in the case to \$23.3 million. If the Commission adopts the retroactive REC trackers proposed by other parties, the result will be to negate up to \$30 million of the ordered rate increase and leave only a small fraction of the Company's approved revenue requirement increase in place for the rate effective period. This will eliminate the Company's opportunity to earn its allowed rate of return in the rate effective period. Such an outcome will perpetuate and likely worsen the Company's chronic under earning in Washington. Such an outcome also cannot in any way be construed to result in rates that are fair, just and reasonable for the Company.

5. For all of these reasons, the Company respectfully requests that the Commission adopt its forward-looking REC tracking proposal and reject the other parties' retroactive REC tracking proposals.

## II. BACKGROUND

6. The issues raised in this proceeding, Phase 2 of Docket UE-100749, span three separate PacifiCorp general rate cases (GRCs) between 2008 and 2011. The case also directly implicates two other cases involving REC revenues: *Re. Amended Petition of Puget Sound Energy, Inc. for an Order Authorizing the Use of the Proceeds from the Sale of Renewable Energy Credits and*

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<sup>1</sup> *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Order 06 (Mar. 25, 2011) [hereinafter "Order 06"].

<sup>2</sup> *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Notice Responding to Informal Request for Clarification (Mar. 30, 2011).

<sup>3</sup> *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Petition for Reconsideration ¶¶ 16, 23 (Apr. 4, 2011).

*Carbon Financial Instruments*, Docket UE-070725 (Puget REC case) and *Washington State Attorney General's Office and the Industrial Customers of Northwest Utilities v. PacifiCorp*, Docket UE-110070 (ICNU/PC REC Complaint).

**A. PacifiCorp's 2008 GRC**

7. PacifiCorp's 2008 GRC, Docket UE-080220, was filed on February 6, 2008, and used a 12-month historic test period ended June 2007.<sup>4</sup> The Company forecast NPC for the 12 months ending June 2008; the Company forecast REC revenues of \$576,254 for that same period.<sup>5</sup> This case was resolved by a Stipulation, to which Staff, Public Counsel, and the Industrial Customers of Northwest Utilities (ICNU) were all parties.<sup>6</sup> The Commission adopted the Stipulation in Order 05, allowing the new rates to go into effect on October 15, 2008.<sup>7</sup>
8. The 2008 GRC Stipulation supported a revenue increase of \$20.4 million, slightly more than one-half of the Company's original filing.<sup>8</sup> While the Stipulation did not specifically address the issue of REC revenues, by its terms the Stipulation settled and resolved all issues in the case.<sup>9</sup>
9. Three years later in this case, Staff and ICNU/Public Counsel (ICNU/PC) have proposed REC revenue credits for 2009 of \$6.7 million and \$6.5 million, respectively, or approximately one-third of the rate increase approved in Order 05 in the 2008 GRC.<sup>10</sup>
10. PacifiCorp's return on equity during 2009 when the rates from the 2008 GRC were in effect was 5.28 percent.<sup>11</sup> At the time, the most recently authorized return on equity for PacifiCorp was 10.20 percent.<sup>12</sup>

<sup>4</sup> *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket No. UE-080220, Application ¶ 6 (Feb. 6, 2008).

<sup>5</sup> *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket No. UE-080220, Exh. No. RBD-4 at 3.5.1 (Mar. 4, 2008).

<sup>6</sup> *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket No. UE-080220, Order 05 ¶ 1 (Oct. 8, 2008).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* ¶¶ 1-2.

<sup>9</sup> *Id.* at Stipulation ¶ 28.

<sup>10</sup> See Breda, Exh. No. KHB-7TC 2:19; Schoenbeck, Exh. No. DWS-5CT 2:6; *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket No. UE-080220, Order 05 ¶ 1 (Oct. 8, 2008).

**B. PacifiCorp's 2009 GRC**

11. PacifiCorp's 2009 GRC, Docket UE-090205, was filed on February 9, 2009, and used a historic test period of 12 months ended June 30, 2008.<sup>13</sup> The Company forecast NPC for the 12 months ending December 2010; the Company forecast REC revenues of \$657,755 for the same period.<sup>14</sup> This case was resolved by a Stipulation, to which Staff, Public Counsel, and ICNU were all parties.<sup>15</sup> The Commission adopted the Stipulation in Order 09, allowing the new rates to go into effect on January 1, 2010.<sup>16</sup>
12. The 2009 Stipulation supported a revenue increase of \$13.5 million, approximately one-third of the Company's original filing.<sup>17</sup> The Stipulation resolved all issues in the case, and specifically addressed REC revenues in two ways.<sup>18</sup> First, the Company agreed to provide the parties detailed reports, tracking, and accounting for REC revenues.<sup>19</sup>
13. Second, the Stipulation provided that: "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."<sup>20</sup> A balancing account for REC revenues was not included in the

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<sup>11</sup> Dalley, Exh. No. RBD-25T 1:15-16.

<sup>12</sup> *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-061546, Order 08 ¶ 222 (June 21, 2007).

<sup>13</sup> *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-090205, Application ¶ 6 (Feb. 9, 2009).

<sup>14</sup> *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-090205, Exh. No. RBD-1T 8:17-19 (Feb. 9, 2009); *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-090205, Exh. No. RBD-3 at 3.7.1 (Feb. 9, 2009).

<sup>15</sup> *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-090205, Order 09 ¶ 1 (Dec. 16, 2009).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* ¶¶ 1-2.

<sup>18</sup> *Id.* at Stipulation ¶¶ 20-22, 29.

<sup>19</sup> *Id.* ¶¶ 20-21.

<sup>20</sup> *Id.* ¶ 22.



Stipulation; such a condition would have been a material departure from the terms of the Stipulation.<sup>21</sup>

14. Some two years later in this case, Staff and ICNU/PC have proposed REC revenue credits for 2010 of \$9.6 million and \$10.8 million, respectively, or approximately two-thirds of the rate increase approved in Order 09 in the 2009 GRC.<sup>22</sup>

15. PacifiCorp's return on equity during 2010 when the rates from the 2009 GRC were in effect was 6.69 percent.<sup>23</sup> At the time, the most recently authorized return on equity for PacifiCorp was 10.20 percent.<sup>24</sup>

### C. PacifiCorp's 2010 GRC—Phase 1

16. Phase 1 of PacifiCorp's 2010 GRC, Docket UE-100749, was filed on May 4, 2010.<sup>25</sup> This case used a 12-month historic test period ended December 2009.<sup>26</sup> The Company forecast NPC for the 12 months ending March 2012;<sup>27</sup> in its rebuttal filing, the Company forecast REC revenues of \$4.8 million for that same period.<sup>28</sup>

17. On March 25, 2011, the Commission issued Order 06 in Phase 1 of this docket.<sup>29</sup> The Commission limited its order to "only fundamental determinations concerning the treatment of REC proceeds," including: (1) adherence to Orders 03 through 06 in the Puget REC Case, which determined that REC benefits should go to all customers with responsibility to pay for the costs

<sup>21</sup> Kelly, Exh. No. ALK-1T 7:21-23.

<sup>22</sup> See Breda, Exh. No. KHB-7TC 2:19-20; Schoenbeck, Exh. No. DWS-5CT 2:6-7; *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-090205, Order 09 ¶ 1 (Dec. 16, 2009).

<sup>23</sup> Dalley, Exh. No. RBD-25T 1:15-16.

<sup>24</sup> See *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-080220, Order 05 ¶ 20, Stipulation at ¶ 18 (Oct. 8, 2005).

<sup>25</sup> *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Application (May 4, 2010).

<sup>26</sup> *Id.* ¶ 5.

<sup>27</sup> *Id.*

<sup>28</sup> Duvall, Exh. No. GND-5T 2:11-20; Dalley, Exh. No. RBD-4T 8:17-9:3.

<sup>29</sup> Order 06.

of the underlying renewable resources;<sup>30</sup> (2) directing the return of REC proceeds to customers in the form of bill credits identified separately on customers' monthly bills;<sup>31</sup> and (3) establishing the REC credit for 2011 at \$4.8 million, subject to a true up against actual REC proceeds received in 2011.<sup>32</sup>

18. The Commission found that the record was insufficient to resolve “the disputed question of whether PacifiCorp should be required to include, in what we here describe as a tracking account, REC proceeds received during periods after the test year, including those received during the pendency of this proceeding.”<sup>33</sup> The Commission noted that possible start dates for the tracking account included Staff’s proposal of January 1, 2010, the date on which PacifiCorp made its initial filing in this case (May 2010), or the start of the rate year (April 2011).<sup>34</sup>

19. To assist in the resolution of this issue, the Commission required the Company to file within 60 days a proposal for operation of the tracking mechanism going forward.<sup>35</sup> The Commission also required PacifiCorp to account for REC proceeds received beginning January 1, 2009 (the beginning of the historic test year in this case) and continuing through the rate year (April 2, 2012).<sup>36</sup>

#### **D. Puget REC Case**

20. The Commission’s decision to establish a REC tracking account in this case was expressly based upon its orders in the Puget REC case.<sup>37</sup> In April 2007, Puget Sound Energy, Inc. (Puget) filed an accounting petition seeking to defer the proceeds of REC and carbon

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<sup>30</sup> *Id.* ¶¶ 199, 202.

<sup>31</sup> *Id.* ¶ 202.

<sup>32</sup> *Id.* ¶¶ 204-205.

<sup>33</sup> *Id.* ¶ 207.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* ¶ 208.

<sup>36</sup> *Id.* ¶ 203.

<sup>37</sup> *Id.* ¶¶ 199-202.

financial instruments (CFI) sales.<sup>38</sup> In October 2009, Puget amended this petition seeking to allocate revenues to assign portions to shareholders (associated with liabilities arising from the energy crisis) and for low-income energy needs.<sup>39</sup> Puget argued that it received a premium on certain California REC sales associated with settling energy crisis-related litigation with the California investor-owned utilities.<sup>40</sup>

21. In response, ICNU witness Donald Schoenbeck filed testimony in January 2010 pointing to two resolutions by the California Public Utilities Commission (CPUC) related to the Puget contracts that stated, “Both resolutions note the contract price is reasonable as compared to the respective utility’s 2008 renewable solicitation.”<sup>41</sup> Mr. Schoenbeck further pointed to PacifiCorp’s comparable California REC sales.<sup>42</sup> Specifically, Mr. Schoenbeck noted that, in July 2009, Southern California Edison (SCE) had sought CPUC approval of a REC contract with PacifiCorp that was similar to the Puget REC contracts.<sup>43</sup> Mr. Schoenbeck included the CPUC resolutions on the PacifiCorp/SCE REC contract as exhibits to his testimony.<sup>44</sup> These exhibits clearly state that the contract anticipated the following volumes of sales from specific PacifiCorp facilities, including Marengo, Marengo II, and Rolling Hills: 110 GWH in 2009, 328 GWH in 2010 and 2011, and 329 GWH in 2012.<sup>45</sup> The resolution also contains the same conclusion as the Puget resolution that the contract price is reasonable compared to SCE’s 2008 renewable solicitation.<sup>46</sup> In its trial brief, ICNU further argued that the facts and findings of Puget’s case “parallel other recent CPUC proceedings. In 2009, SCE filed for approval of REC sales

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<sup>38</sup> *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy Co.*, Docket UE-070725, Order 03 ¶ 6 (May 20, 2010).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* ¶ 21.

<sup>41</sup> Exh. No. DWS-7 10:1-2.

<sup>42</sup> *Id.* at 10:7-11.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 10:7-11, 14-65.

<sup>45</sup> *Id.* at 28.

<sup>46</sup> *Id.* at 60.

contracts executed with PacifiCorp. The CPUC approved the SCE-PacifiCorp prices as reasonable.”<sup>47</sup>

22. Another party to the Puget REC case, The Kroger Co. (Kroger), filed testimony citing the treatment of PacifiCorp’s RECs in Utah and Wyoming as support for an approach that allocated 100 percent of RECs to customers.<sup>48</sup> Public Counsel cited PacifiCorp’s REC reporting requirements from the 2009 GRC Stipulation and suggested similar requirements for Puget.<sup>49</sup> From this testimony, it is clear that parties to the Puget REC case understood that PacifiCorp was actively engaged in the REC markets and had entered into contracts that were very similar to the Puget contracts in question.

23. While Puget’s REC deferral petition was pending, Public Counsel and Kroger attempted to bring the REC sales issue into Puget’s GRC.<sup>50</sup> Public Counsel argued in the GRC that “REC revenue issues are directly related to the proper analysis of power costs in this case . . . [W]hen wind generation costs are included in the power costs sought to be recovered, proper ratemaking principles require that revenues derived from the related RECs must also be considered. . . . Failure to take these known and measurable revenues into account would be a violation of the matching principle.”<sup>51</sup> The Commission acknowledged the merit of Public Counsel’s argument, but granted the motion to strike, finding that the pendency of the deferred accounting docket on RECs ensured against harm to customers.<sup>52</sup>

24. On May 20, 2010, the Commission issued Order 03 in the Puget REC case, deciding that Puget’s customers should share REC revenues on the same basis as the Commission allocates the

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<sup>47</sup> Exh. No. DWS-9 ¶ 39 (footnotes omitted).

<sup>48</sup> Exh. No. DWS-12 8:1-11.

<sup>49</sup> Exh. No. DWS-11 ¶ 55.

<sup>50</sup> *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy Co.*, Dockets UE-090704 and UG-090705, Order 10 ¶ 3 (Jan. 8, 2010).

<sup>51</sup> *Id.* ¶ 7 (quoting Public Counsel’s Response to Motion to Strike).

<sup>52</sup> *Id.* ¶¶ 8-11.

costs of renewable resources in rates.<sup>53</sup> The Commission determined that Puget sold its RECs at a premium and permitted Puget to retain 50 percent of the net premium.<sup>54</sup> The Commission noted that its decision was a function of the “unique” situation caused by “evolving REC markets,” and explained: “We exercise our discretion to allow PSE to retain a portion of [the premium], in part, because we have recognized previously the importance of utilities pursuing strategies that benefit both shareholders and ratepayers, and we again do so here.”<sup>55</sup>

25. The implementation of Order 03 proved challenging, and “it was not until Commission action on petition for reconsideration and on a joint proposal by the parties expressly invited by the Commission, that these questions were fully resolved.”<sup>56</sup> The final order in the Puget REC case, Order 06, was issued on October 26, 2010.<sup>57</sup>

26. Because Puget filed for deferred accounting and the Commission declined to consider REC revenues in Puget’s GRC and include them in base rates, the Puget REC case did not invoke retroactive ratemaking, a violation of the filed rate doctrine, or the other legal issues present in this case.

#### **E. ICNU/PC REC Complaint**

27. In January 2011, ICNU and Public Counsel jointly filed a complaint against PacifiCorp, seeking to set aside the provisions of the 2009 GRC Stipulation relating to REC revenues on the basis that PacifiCorp misled them on this issue.<sup>58</sup> ICNU/PC sought to recover PacifiCorp’s

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<sup>53</sup> *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy Co.*, Docket UE-070725, Order 03 ¶ 84 (May 20, 2010).

<sup>54</sup> *Id.* ¶¶ 46-47.

<sup>55</sup> *Id.* n.56.

<sup>56</sup> Order 06 ¶ 200 (footnotes omitted).

<sup>57</sup> *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy Co.*, Docket UE-070725, Order 06 (Oct. 26, 2010).

<sup>58</sup> Exh. No. DWS-13.

actual REC revenues for 2010 and asked the Commission to establish an ongoing REC revenue balancing account.<sup>59</sup>

28. PacifiCorp moved to dismiss the complaint on various grounds, including the six-month statute of limitations.<sup>60</sup> In response, ICNU/PC claimed that they were unaware that PacifiCorp's actual REC revenues were significantly higher than forecast in the 2009 GRC until July 2010 when they received copies of PacifiCorp's California REC sales contracts.<sup>61</sup> Disturbingly, in the ICNU/PC REC Complaint case, no party (ICNU, Public Counsel, or Staff) informed PacifiCorp or the Commission that, in January 2010, ICNU had actually included the CPUC resolutions associated with PacifiCorp's California REC contract as an exhibit to ICNU's testimony in the Puget REC case.<sup>62</sup> This was six months prior to the "discovery" date ICNU/PC averred in the ICNU/PC REC complaint case. As noted above, ICNU relied upon the PacifiCorp REC sale to attempt to prove that Puget did not sell its RECs at a premium.<sup>63</sup>

29. The Administrative Law Judge (ALJ) dismissed the ICNU/PC REC Complaint, noting several legal and policy impediments: (1) ICNU/PC's claims were barred by the statute of limitations which began to run at least by the May 2010 filing date of the 2010 GRC; (2) ICNU/PC's request to amend the 2009 GRC Order to reflect actual 2010 REC revenues was improper because the Commission "cannot legally establish retroactive rates;" (3) reopening the 2009 GRC to allow ICNU/PC to relitigate the REC issues would be an improper collateral attack on the 2009 GRC final order; and (4) the policy against single issue ratemaking precluded ICNU/PC from changing the outcome on one issue in the 2009 GRC Stipulation, but leaving the

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<sup>59</sup> *Id.* ¶ 25.

<sup>60</sup> Exh. No. DWS-15 ¶¶ 30-41.

<sup>61</sup> Exh. No. DWS-16 ¶ 19.

<sup>62</sup> *See* Exh. No. DWS-7 14-65.

<sup>63</sup> Exh. No. DWS-9 ¶ 39.

rest of the Stipulation undisturbed.<sup>64</sup> Put another way, the ALJ reasoned that “the Commission cannot hold the Company to the bargain it made with all of the parties in [the 2009 GRC], reopen the matter to litigation and reduce the agreed upon revenue requirement, and enforce an order producing such a result.”<sup>65</sup>

30. In dismissing the complaint, the ALJ helped clarify the scope of this Phase 2 proceeding, noting that “[t]he question remains open in [the 2010 GRC] whether the REC credits ultimately ordered in that proceeding will include all or part of the REC revenues PacifiCorp received during 2010, which are the principle revenues with which the Complaint is concerned.”<sup>66</sup>

### III. OUTLINE OF PARTIES’ REC TRACKER PROPOSALS

31. On May 24, 2011, PacifiCorp and Staff filed proposals for operation of the REC tracking mechanism going forward, as contemplated by Paragraph 208 of Order 06. ICNU/PC included their REC tracker proposal in their testimony filed in September 2011. PacifiCorp’s compliance filing included the detailed accounting of actual REC proceeds for calendar years 2009 and 2010 and an updated forecast of REC revenues from January 1, 2011 through March 31, 2012.<sup>67</sup>

#### A. PacifiCorp’s REC Tracker Proposal

32. The Company’s proposed REC tracking mechanism operates on a forward-looking basis only, beginning with the April 2011 rate effective date for new rates in this case.<sup>68</sup> Consistent

<sup>64</sup> *Wash. State Attorney Gen.’s Office and the Industrial Customers of Northwest Utilities v. PacifiCorp*, Docket UE-110070, Order 1, Administrative Law Judge’s Initial Order Dismissing Complaint ¶¶ 33, 35, 41-43 (Apr. 27, 2011) [hereinafter “Administrative Law Judge’s Initial Order”]. On May 26, 2011, the Commission issued a Notice of Finality with respect to the Initial Order Dismissing Complaint. The Notice of Finality stated that no party petitioned for administrative review of the initial order and the Commission did not give notice of its intention to review the order on its own motion, so the order became final on May 25, 2011 by operation of law. The Notice of Finality also stated that the Commission does not endorse the order’s reasoning and conclusions, and if cited in the future, the order must be identified as an ALJ’s order. PacifiCorp is citing the Initial Order as such in this brief.

<sup>65</sup> Administrative Law Judge’s Initial Order ¶ 42.

<sup>66</sup> *Id.* ¶ 8.

<sup>67</sup> *Wash. Utils. & Transp. Comm’n v. PacifiCorp*, Docket UE-100749, PacifiCorp’s Compliance Filing (May 24, 2011). The rate effective period ends on April 2, 2012, but for practical reasons the Company rounded the forecast to the end of March 2012. *Id.*

<sup>68</sup> Kelly, Exh. No. ALK-1T 3:19-25.

with Order 06, PacifiCorp's proposed mechanism trues up the \$4.8 million included in base rates to actual REC revenues received in the rate effective period.<sup>69</sup> Although Order 06 contemplated a mechanism tied to the April 3, 2011-April 2, 2012 rate effective period, PacifiCorp proposed that the true up be based on a calendar year beginning in 2012.<sup>70</sup>

33. If the Commission accepts this proposal, PacifiCorp will submit a full accounting of REC revenues actually received from April 1, 2011 through December 31, 2011 by May 1, 2012.<sup>71</sup> The Company will also provide an estimate of the REC proceeds it expects to receive from January 1, 2012 to December 31, 2012.<sup>72</sup> In subsequent years, the Company will continue to provide this information for the full calendar year.<sup>73</sup> Any positive or negative balance in the REC tracker will accrue interest at the Company's weighted average cost of capital.<sup>74</sup> The Company will file an advice letter on May 1 of each year to increase or decrease the REC credit in Schedule 95 to reflect the true up of actual REC revenues received and those included in rates during the historic period and the estimate of future proceeds.<sup>75</sup>

34. PacifiCorp also proposed a calculation to determine how to allocate RECs and REC revenues to Washington. The Company's allocation method ensures that the Company does not over-allocate RECs, which would result in a double-counting of RECs that is prohibited under state RPS requirements.<sup>76</sup> In the past, the Company allocated REC revenues to Washington using the Control Area Generation West (CAGW) allocation percentage to REC revenues

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<sup>69</sup> Dalley, Exh. No. RBD-25T 6:25-7:8.

<sup>70</sup> *Id.* at 6:21-24. ICNU/PC agree to have the accounting be based on a calendar year rather than the rate year. Schoenbeck, Exh. No. DWS-5CT 8:5-6. Staff also appears to agree with PacifiCorp's proposal. *See* Breda, Exh. No. KHB-7TC 10:11-15.

<sup>71</sup> Dalley, Exh. No. RBD-25T 6:27-28.

<sup>72</sup> *Id.* at 7:3-5.

<sup>73</sup> *Id.* at 6:27-7:2.

<sup>74</sup> *Id.* at 7:6-8.

<sup>75</sup> *Id.* at 7:9-14.

<sup>76</sup> *Id.* at 7:22-8:4.



booked from the sale of RECs from west control area resources.<sup>77</sup> This allocation methodology was used in the Company's 2009 and 2010 Commission Basis Reports and its Quarterly REC Revenue Reports provided to Staff and ICNU/PC.<sup>78</sup> No party challenged the allocation methodology prior to this phase of the docket.<sup>79</sup> Staff also supported this methodology in Phase 1 of this docket.<sup>80</sup> The 2009 and 2010 REC revenues reported in the Company's compliance filing in this docket reflect this methodology.<sup>81</sup>

35. Beginning in 2011, fewer Washington-allocated RECs will be available for sale because the Company will hold RECs for Washington RPS compliance.<sup>82</sup> Holding RECs for Washington RPS compliance also requires a modification to the allocation methodology to account for these RECs.<sup>83</sup> This methodology calculates Washington's share of REC revenue by first subtracting eligible RECs necessary to satisfy Washington's RPS from the total RECs allocated to Washington using the CAGW factor, which results in the Washington-allocated RECs in excess of RPS compliance.<sup>84</sup> This amount is multiplied by the percentage of RECs the Company was able to sell, which results in the number of excess Washington RECs sold.<sup>85</sup> This amount is multiplied by the average price per REC to determine Washington's total REC revenue.<sup>86</sup> This calculation is performed separately for Washington RPS eligible and Washington RPS non-eligible RECs.<sup>87</sup>

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<sup>77</sup> Dalley, Exh. No. RBD-28CT 6:14-21.

<sup>78</sup> *Id.* at 7:12-18.

<sup>79</sup> *Id.* at 7:12-21.

<sup>80</sup> *Id.* at 7:21.

<sup>81</sup> *Id.* at 6:14-21.

<sup>82</sup> Dalley, Exh. No. RBD-25T 7:15-19.

<sup>83</sup> Dalley, Exh. No. RBD-28CT 10:3-10.

<sup>84</sup> *Id.* at 10:11-16.

<sup>85</sup> *Id.* at 10:16-18.

<sup>86</sup> *Id.* at 10:18-20.

<sup>87</sup> *Id.* at 10:20-21.

**B. Staff's and ICNU/PC's REC Tracker Proposals**

36. Both Staff and ICNU/PC propose REC tracker mechanisms with rate credits for RECs both on a forward-looking basis (for REC revenues in the rate effective period) and a backward-looking basis (for REC revenues in 2009 and 2010).<sup>88</sup>

**1. Staff's REC Tracker Proposal**

37. Staff's proposal has changed in each successive filing on REC revenues, each time increasing the amount of REC revenues at issue. In Phase 1 of this proceeding, Staff accepted the Company's methodology for allocating REC revenues to Washington that has been used in previous filings.<sup>89</sup> This methodology allocated REC revenues to Washington using the CAGW allocation percentage to REC revenues booked from the sale of RECs from west control area resources.<sup>90</sup>

38. In Staff's proposal filed on May 24, 2011, Staff proposed a new allocation approach.<sup>91</sup> Staff's new approach applied a going-forward methodology similar to the methodology developed by the Company for REC revenues beginning with the rate effective period on a retroactive basis to 2009 and 2010 REC revenues.<sup>92</sup> Staff stated that the basis for this revised methodology was to add an additional share of revenues associated with RECs held for compliance in Oregon and California.<sup>93</sup> This new approach increased Washington-allocated REC revenues for 2009 by approximately \$1.6 million and for 2010 by approximately \$2.1 million compared with the method originally accepted and used by Staff.<sup>94</sup> Based on this methodology, Staff proposed crediting customers \$6,422,246 for 2009 REC revenues and

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<sup>88</sup> *Id.* at 4:17-21.

<sup>89</sup> Kelly, Exh. No. ALK-2CT 7:17-23.

<sup>90</sup> Dalley, Exh. No. RBD-28CT 6:14-21.

<sup>91</sup> Kelly, Exh. No. ALK-2CT 8:1-6.

<sup>92</sup> *Id.* at 8:1-6; Dalley, Exh. No. RBD-28CT 13:4-10.

<sup>93</sup> Breda, Exh. No. KHB-7TC 8:9-15.

<sup>94</sup> Kelly, Exh. No. ALK-2CT 8:4-6.

\$9,811,838 for 2010 REC revenues.<sup>95</sup>

39. Then, in direct testimony in this phase of the proceeding, Staff proposed a third allocation approach.<sup>96</sup> Staff's third approach relies on revenues booked in 2009 and 2010, rather than revenues associated with RECs generated in those years, so Staff's new calculation includes revenues from RECs generated in 2008.<sup>97</sup>

40. This second change to Staff's allocation approach further increased Washington-allocated REC revenues, by approximately \$270,000 for 2009 and approximately \$409,000 for 2010.<sup>98</sup> Staff included an offset of \$657,755 to 2010 REC revenues to reflect the REC baseline adopted in PacifiCorp's 2009 GRC.<sup>99</sup> Staff did not, however, offset 2009 REC revenues for amounts included in rates from PacifiCorp's 2008 GRC.<sup>100</sup> Staff's latest proposal is to credit customers \$6,692,295 in 2009 REC revenues and \$9,563,356 in 2010 REC revenues, for a total revenue credit of \$16,255,651.<sup>101</sup>

41. Staff proposed using the tracking mechanism established by the Commission in this proceeding to return the 2009 and 2010 revenues to customers.<sup>102</sup> Staff proposed to change the REC tracker on a prospective basis from one based on a forecast and true up, as ordered by the Commission, to one where the revenue included in the tracking mechanism be based on actual REC revenue.<sup>103</sup> Staff also proposed that the tariff rate should remain the same until the

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<sup>95</sup> *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-100749, Commission Staff's Approach for Allocating RECs at Attachment A (May 24, 2011).

<sup>96</sup> Kelly, Exh. No. ALK-2CT 8:7-14.

<sup>97</sup> *Id.* at 8:7-14; Dalley, Exh. No. RBD-28CT 13:4-10.

<sup>98</sup> Kelly, Exh. No. ALK-2CT 8:11-14.

<sup>99</sup> Breda, Exh. No. KHB-7TC 6:23-24.

<sup>100</sup> Kelly, Exh. No. ALK-2CT 7:6-16.

<sup>101</sup> Breda, Exh. No. KHB-7TC 2:14-20.

<sup>102</sup> *Id.* at 3:1-7.

<sup>103</sup> *Id.* at 3:1-7.

balancing account is exhausted or until ongoing REC sales indicate a different credit rate is appropriate.<sup>104</sup>

## 2. ICNU/PC's REC Tracker Proposal

42. ICNU/PC's proposal is generally consistent with Staff's proposal.<sup>105</sup> Staff summarized the three differences between the proposals of Staff and ICNU/PC.<sup>106</sup> First, ICNU/PC does not credit REC revenues for 2010 with the \$657,755 REC baseline established in PacifiCorp's 2009 GRC.<sup>107</sup> Second, ICNU/PC's calculation recognizes REC revenues based on the date the RECs were generated, whereas Staff's calculation recognizes them when PacifiCorp realized the revenue associated with the RECs.<sup>108</sup> Third, in allocating REC revenues to Washington, ICNU/PC assumed that PacifiCorp would have sold 100 percent of the RECs allocated to Washington, whereas Staff assumed PacifiCorp would have sold the same ratio it had actually sold in the past.<sup>109</sup> ICNU's calculations result in \$6.5 million in REC revenues for 2009 and \$10.8 million for 2010, for a total revenue credit of \$17.3 million.

## 3. PacifiCorp's Response to Staff's and ICNU/PC's REC Tracker Proposals

43. PacifiCorp filed rebuttal testimony in response to Staff's and ICNU/PC's testimony. In addition to objecting to retroactive recovery of REC revenues received in 2009 and 2010, the Company's testimony outlined its objections to specific elements of other parties' proposals. First, PacifiCorp objected to Staff's retroactive changes to the allocation of 2009 and 2010 REC revenues.<sup>110</sup> Second, PacifiCorp argued that Staff's 2009 REC revenues should be offset by the

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<sup>104</sup> *Id.* at 3:1-7.

<sup>105</sup> Breda, Exh. No. KHB-9TC 2:14.

<sup>106</sup> *Id.* at 2:5-6.

<sup>107</sup> *Id.* at 2:7-9.

<sup>108</sup> *Id.* at 2:12-14.

<sup>109</sup> *Id.* at 3:11-22.

<sup>110</sup> Dalley, Exh. No. RBD-28CT 11 3:14.

\$576,254 of REC revenues included in the Company's 2008 GRC.<sup>111</sup> Third, PacifiCorp objected to Staff's and ICNU/PC's proposals to maintain the same Schedule 95 rate regardless of the outcome of this proceeding.<sup>112</sup> Finally, PacifiCorp explained the corrections that would be required to make Staff's and ICNU/PC's allocation calculations accurate.<sup>113</sup> Correcting the allocation errors in their calculations would result in 2009 REC revenues of \$5,848,379 and 2010 REC revenues of \$9,373,639, for a total revenue credit of \$15,222,018.<sup>114</sup> PacifiCorp also noted that if the Commission commenced the REC tracker on the date of the filing of the 2010 GRC, this would result in a REC revenue credit of approximately \$4.75 million.<sup>115</sup>

#### IV. DISCUSSION

##### A. Washington Law and Policy Support PacifiCorp's REC Tracker Proposal and Prohibit Staff's and ICNU/PC's REC Tracker Proposals.

44. PacifiCorp's REC tracker proposal begins on the effective date for rates in the 2010 GRC and operates on a prospective basis, consistent with Washington law and policy. In contrast, Staff's and ICNU/PC's REC tracker proposals apply retroactively and implicate a host of legal and policy impediments.

##### 1. The Puget REC Order Applies to PacifiCorp on a Prospective Basis Only, Does Not Support Staff's and ICNU/PC's Proposed Retroactive Trackers of REC Revenues, and Demonstrates the Exercise of Commission Discretion in Allocating REC Revenues.

45. In Order 06, the Commission decided to adhere to the basic principles discussed in the Puget REC order requiring that proceeds derived from the sale of RECs be returned to

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<sup>111</sup> Kelly, Exh. No. ALK-2CT 7:6-16.

<sup>112</sup> *Id.* at 11:13-21.

<sup>113</sup> Dalley, Exh. NO. RBD-28CT 14-20.

<sup>114</sup> *Id.* at 16:7-13; 20:11-18.

<sup>115</sup> *Id.* at 6:5-7.

customers.<sup>116</sup> The Commission noted that it addressed the issue of RECs for the first time in the Puget REC order, decided less than one year prior to Order 06.<sup>117</sup>

46. There are three key limitations on the application of the Puget REC order to this case. First, because the Puget REC case resulted from an accounting petition filed by Puget and REC revenues were not included in Puget’s base rates, the Puget REC case did not involve nor is it precedent on the major issues raised in this case, including retroactive ratemaking, filed rate doctrine, impermissible collateral attack, and single issue ratemaking.
47. Second, the Puget REC order was one of first impression and the decision expressly noted that the factual context was “unique and non-recurring.”<sup>118</sup> In these circumstances, fairness requires that the Commission apply the Puget REC order to PacifiCorp on a prospective basis only (i.e. the approach proposed in PacifiCorp’s REC tracker proposal).<sup>119</sup> In any event, the Puget REC order does not provide any authority for crediting PacifiCorp REC revenues that accrued prior to the date of that order (Order 03 was issued on May 20, 2010; the final order in the case, Order 06, was issued on October 26, 2010.)
48. Third, the Commission ruled in the Puget REC order that it has the discretion to determine ratemaking treatment for REC proceeds, taking into account equitable

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<sup>116</sup> Order 06 ¶ 202.

<sup>117</sup> *Id.* ¶ 199.

<sup>118</sup> *Id.*; *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy Co.*, Docket UE-070725, Order 03 n.56 (May 20, 2010).

<sup>119</sup> *See U.S. West Comm. Inc. v. Wash. Utils. & Transp. Comm’n*, 134 Wash.2d 48, 52 (1997) (affirming Commission decision to apply methodology change on a prospective basis only); *S.E.C. v. Chenery Corp.*, 332 U.S. 194, 203 (1947) (retroactive application of new agency adjudication permissible, but “must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles.”); *Champagne v. Thurston Cty.* 163 Wash.2d 69, 79 (2008) (Generally, we presume prospective application of newly amended administrative regulations, particularly where the amendments change substantive rights.). *See also Letourneau v. Dep’t of Licensing*, 131 Wash.App. 657, 665–66, 128 P.3d 647 (2006) (considering retroactive application of WAC rule based on whether: (1) the agency intended the amendment to apply retroactively, (2) the effect of the amendment is remedial or curative, or (3) the amendment serves to clarify the purpose of the existing rule.)

considerations.<sup>120</sup> A factor the Commission expressly cited in exercising this discretion is whether it supports utilities pursuing strategies that benefit both shareholders and ratepayers.<sup>121</sup> The record in this case demonstrates that a REC tracking mechanism that allows retroactive REC credits is decidedly unresponsive of PacifiCorp's efforts to reduce its overall costs for both customers and shareholders by actively participating in the REC markets. The prospect of retroactively crediting REC revenues introduces significant risks, creates an unpredictable regulatory environment for the Company, and discourages future actions by the Company to take the initiative to improve its earnings.<sup>122</sup> In addition, the record demonstrates that the pricing of the Puget contracts for which Puget was awarded a premium are comparable to the pricing of the PacifiCorp contracts, when compared against the SCE 2008 competitive solicitation.

49. The REC revenues PacifiCorp received in 2009 and 2010 mitigated PacifiCorp's significant under earnings in those years and helped balance the Company's under recovery of generation and power costs, including costs associated with poor hydro conditions. No party contests the fact that PacifiCorp's 2009 and 2010 returns on equity (ROE) were significantly below the ROE authorized by the Commission for those periods and in this docket.<sup>123</sup> The Company's Washington returns in 2009 and 2010 were 5.28 percent and 6.69 percent respectively,<sup>124</sup> including the impact of REC revenues.<sup>125</sup> The fact that the Company's ROEs during these years were far below that which was authorized—10.20 percent—while taking into account the REC revenues indicates that the Company's rates in total were just and reasonable.

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<sup>120</sup> *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy Co.*, Docket UE-070725, Order 03 ¶ 47 (May 20, 2010).

<sup>121</sup> *Id.* at ¶¶ 41, 47 n.56.

<sup>122</sup> Kelly Exh. No. ALK-1T 4:14-17.

<sup>123</sup> Dalley, Exh. No. RBD-25T 1:13-18.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 1:19-20.

50. Requiring the Company to return 2009 and 2010 REC revenues to customers would eliminate the Company's opportunity to earn its authorized rate of return in 2011.<sup>126</sup> Staff's and ICNU/PC's proposals would reduce the Company's Washington ROE by approximately three percentage points.<sup>127</sup> Furthermore, since the REC revenues for 2009 and 2010 are associated with prior fiscal periods, the Company would be required to book the accounting entries immediately per Financial Accounting Standards Board Accounting Standards Codification Topic 980 Regulated Operations.<sup>128</sup> As a result, a retroactive credit for REC revenues in 2009 or 2010 would result in a significant one-time adjustment to the Company's 2011 Washington earnings. This potential reduction to earnings would be in addition to the unexpected reduction in 2011 earnings of \$5.4 million associated with the Commission ordered change in tax treatment of the Chehalis regulatory asset in Phase 1 of this case.<sup>129</sup>

51. Staff claims that the Commission should order retroactive REC credits regardless of the impact on the Company's earnings.<sup>130</sup> However, whenever the Commission sets rates, it must ensure that the rates include compensation necessary to provide safe and reliable electric service<sup>131</sup> and "a rate of return sufficient to maintain its financial integrity, attract capital on reasonable terms, receive a return comparable to other enterprises of corresponding risk,"<sup>132</sup> and maintain the utility's creditworthiness.<sup>133</sup> The Washington Supreme Court has also noted that a basic function of the Commission is to "not only assure fair prices and service to customers, but

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<sup>126</sup> Dalley, Exh. No. RBD-28CT 3:14-21.

<sup>127</sup> *Id.* at 3:1-2.

<sup>128</sup> *Id.* at 3: 5-9.

<sup>129</sup> *Id.* at 3: 5-13.

<sup>130</sup> Breda, Exh. No. KHB-7TC 13:7-12.

<sup>131</sup> RCW 80.28.010.

<sup>132</sup> *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Docket Nos. UE-991606, *et al.*, 3rd Supp. Order ¶ 324 (2000); *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-050684, Order 04 ¶ 235 (Apr. 17, 2006)

<sup>133</sup> *See Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).



also to assure that regulated utilities earn enough to remain in business—and each of which functions is as important in the eyes of the law as the other.”<sup>134</sup>

52. While the Commission has discretion on how to treat REC revenues in rates, this discretion is limited by the Commission’s obligation to ensure that the rates it orders are sufficient and provide the Company the opportunity to earn its approved rate of return. The Commission must also comply with the applicable laws and policies discussed below.

**2. The Rule Against Retroactive Ratemaking Prohibits Including REC Revenues Received in the Past in Future Rates.**

53. Both Staff’s and ICNU/PC’s proposals seek to credit customers for REC revenues received by the Company in 2009 and 2010, on top of the \$4.8 million of REC revenues currently reflected in rates for the rate effective period.

54. PacifiCorp’s current REC revenue credit was based on a forecast for the rate effective period (the period beginning April 3, 2011).<sup>135</sup> As Mr. Duvall explained, the Company projected REC revenues to match the NPC forecast period.<sup>136</sup> Similarly, Mr. Dalley testified at hearing that RECs are included in this case on a forward-looking basis for the twelve months ending March 2012, consistent with NPC.<sup>137</sup> The Commission explained in Order 06 that it has modified “the historical test year approach to recognize that, for certain expenses such as the costs the Company incurs to generate electricity, or ‘net power costs,’ a forward looking approach is more appropriate.”<sup>138</sup>

55. The Commission adopted PacifiCorp’s REC forecast for 2011, stating that “we will accept for purposes of establishing 2011 credits the amount of REC revenues to which Staff and

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<sup>134</sup> *People’s Org. for Wash. Energy Res. v. Wash. Utils. & Transp. Comm’n*, 104 Wn.2d 798, 808 (1985) (en banc).

<sup>135</sup> Duvall, Exh. No. GND-5T 3:20-4:4.

<sup>136</sup> *Id.* at 2:11-20.

<sup>137</sup> Dalley, TR. 370:5-13.

<sup>138</sup> Order 06 ¶ 13.

PacifiCorp agree, approximately \$4.8 million.”<sup>139</sup> The Commission stated that at the end of the rate year, PacifiCorp will be required to provide an estimate of the REC proceeds it expects in the following twelve months, and this amount will be trued up to REC proceeds actually received during that period.<sup>140</sup>

56. The 2008, 2009, and 2010 GRCs forecast REC revenue levels in rates covering the time period of October 15, 2008 (the rate effective date of the 2008 GRC) to the present. Staff’s and ICNU/PC’s proposals to recalculate the REC revenue levels for the historic 2009 and 2010 periods based upon actual and imputed results constitute illegal retroactive ratemaking.

**a. The Rule Against Retroactive Ratemaking Applies in this Case.**

57. The Commission sets rates on a prospective basis only.<sup>141</sup> The Commission adheres to the doctrine against retroactive ratemaking,<sup>142</sup> which “prohibits the Commission from authorizing or requiring a utility to adjust current rates to make up for past errors in projections.”<sup>143</sup> The Commission has previously stated that “retroactive ratemaking . . . is extremely poor public policy and is illegal under the statutes of Washington State as a rate applied to a service without prior notice and review.”<sup>144</sup>

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<sup>139</sup> *Id.* ¶ 204.

<sup>140</sup> *Id.* ¶¶ 205, 206.

<sup>141</sup> *Id.* ¶ 12 (in rate case, Commission determines the Company’s prudently incurred expenses and allows recovery of those expenses prospectively in rates.)

<sup>142</sup> The Commission’s statutes require that if the Commission determines that rates are unjust or unreasonable, it shall determine just and reasonable rates “to be thereafter observed and in force.” RCW 80.28.020.

<sup>143</sup> *Re Application of Puget Sound Energy for Authorization Regarding the Deferral of the Net Impact of the Conservation Incentive Credit Program*, Docket UE-010410, Order (Nov. 9, 2001) Denying Petition to Amend Accounting Order (Nov. 9, 2001).

<sup>144</sup> *Id.*; see also RCW 80.28.020. The Commission denied Puget’s petition on the basis that the “retroactive ratemaking doctrine prohibits the Commission from authorizing or requiring a utility to adjust current rates to make up for past errors in projections. With few exceptions (not applicable here), under RCW 80.28.020, the Commission is charged with setting rates on a prospective basis.”

58. Staff's and ICNU/PC's proposals constitute illegal retroactive ratemaking. The proposals seek to adjust current rates to make up for incorrect projections of REC revenues in 2009 and 2010 by adjusting future rates.
59. The Commission recently evaluated retroactive ratemaking in the specific context of PacifiCorp's REC revenues the ICNU/PC REC Complaint.<sup>145</sup> In the Initial Order dismissing the complaint, the ALJ declined to amend the final order in the 2009 GRC, in part because "[t]he Commission is empowered to change currently effective rates upon a proper showing but must establish any revised rates for prospective application."<sup>146</sup> The Commission's rule on retroactive ratemaking was made clear in that order: "The Commission cannot legally establish retroactive rates."<sup>147</sup>
60. In another case involving revenue projections in rates, US West Communications, Inc. (US West) filed a motion for reconsideration of a Commission order and specifically "requested permission to approach the Commission at a later date to increase revenues if Directory Assistance revenue estimates used in this proceeding are not met."<sup>148</sup> Public Counsel and Staff objected to US West's request: "Public Counsel calls this request a proposal for retroactive and single issue ratemaking. Commission Staff calls it piecemeal relief. If accepted, Public Counsel contends, any party would be free to reopen a case to show that any estimated revenues failed to meet expectations."<sup>149</sup>
61. The Commission agreed with Public Counsel and Staff: "Every rate case is a composite of estimates calculated from past experience and the application of sound judgment. An order

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<sup>145</sup> Administrative Law Judge's Initial Order ¶ 35.

<sup>146</sup> *Id.* ¶ 35 (emphasis in original).

<sup>147</sup> *Id.*

<sup>148</sup> *Wash. Util. and Transp. Comm'n v. US West Communications*, Docket UT-970766, 14th Supp. Order, 1998 WL 223202 \* 1 (Mar. 24, 1998).

<sup>149</sup> *Id.* at \*5.

gives the Company the opportunity to earn at a given level, reflect relationships between revenues and expenses. It is not a guarantee that each element will meet estimates. The proper means to examine those relationships is a general rate case. The Company's remedy for failure to meet authorized rate of return is to file a general rate case.”<sup>150</sup>

**b. No Exception to the Rule Against Retroactive Ratemaking Applies.**

62. The primary exception to the rule against retroactive ratemaking is the use of deferred accounting to track costs during one period with the possibility for inclusion in rates in a future period.<sup>151</sup> The Commission has recognized allowing deferred expenses in rates as a shift in timing of the collection of the expense rather than retroactive ratemaking.<sup>152</sup> The Commission has been clear, however, that deferred accounting requires notice before costs can be tracked for inclusion in rates in the future.<sup>153</sup>
63. In a 2002 case evaluating whether to allow PacifiCorp to track excess NPC for later inclusion in rates, the Commission established that “authorizing deferral accounting, in appropriate circumstances, for costs incurred during periods that post-date an application to establish such accounting does not violate the general prohibition against retroactive ratemaking.”<sup>154</sup> The Commission’s lengthy discussion of the sufficiency of the notice of deferred accounting provided by PacifiCorp leaves no doubt that notice of a request for deferred accounting is required before deferred accounting can occur.<sup>155</sup>
64. In a later order in that docket, the Commission reiterated its finding that authorizing deferral of excess power costs incurred before notice of the request for deferral was provided to

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<sup>150</sup> *Id.*

<sup>151</sup> *Re Petition of PacifiCorp for an Accounting Order Authorizing Deferral of Excess Net Power Costs*, Docket UE 020417, 3<sup>rd</sup> Supp. Order ¶ 24 (Sept. 27, 2002).

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* ¶ 6 (emphasis added).

<sup>155</sup> *Id.* ¶¶ 24-27.

other parties would “undeniably . . . violate the general prohibition against retroactive ratemaking and thus is not a legally sustainable result.”<sup>156</sup>

65. The Commission has also found that it cannot retroactively create an accounting order to recognize “a deferral that was neither authorized nor recorded, and impose that deferral now to make up for [the utility] not collecting [the deferral] in the past.”<sup>157</sup> In this case, no party has filed a deferral petition for PacifiCorp’s 2009 or 2010 REC revenues. The Commission should similarly find that retroactively creating a deferral here would be “improper and illegal.”<sup>158</sup>
66. Staff, Public Counsel, and ICNU have never explained why they did not file an application for deferred accounting for the Company’s 2010 REC revenues. The 2009 GRC Stipulation expressly anticipated the potential for a filing for deferred accounting related to REC revenues,<sup>159</sup> and included a baseline for REC revenues for the 2010 rate effective period.<sup>160</sup> The record in this case now unequivocally demonstrates that each of these parties were aware of PacifiCorp’s significant REC sale to SCE by January 2010 when ICNU included the CPUC filings related to the contract in the record in the Puget REC case. Had these parties sought deferred accounting in a timely manner, PacifiCorp could have responded by reviewing and seeking to defer matching cost items. Allowing retroactive recovery of 2010 REC revenues without a deferred accounting petition is contrary to Commission precedent and unduly prejudicial to PacifiCorp.
67. With respect to 2009 REC revenues, Commission case law precludes a request for deferred accounting because no REC revenue baseline for 2009 was established in the 2008 GRC

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<sup>156</sup> *Re Petition of PacifiCorp for an Accounting Order Authorizing Deferral of Excess Net Power Costs*, Docket UE 020417, 6<sup>th</sup> Supp. Order ¶ 36 (July 15, 2003).

<sup>157</sup> *Wash. Utils. & Transp. Comm’n v. Olympic Pipe Line Co.*, Docket TO-011472, 20<sup>th</sup> Supp. Order ¶ 119 (Sept. 27, 2002).

<sup>158</sup> *Id.* ¶ 120.

<sup>159</sup> *Wash. Utils. & Transp. Comm’n v. PacifiCorp*, Docket UE-090205 Order 09, Stipulation ¶ 22 (Dec. 16, 2009).

<sup>160</sup> *Id.*

Stipulation. In Docket UE-020417, PacifiCorp requested deferral of excess NPC.<sup>161</sup> The Commission rejected PacifiCorp's request, in part because the Company's prior rate case had been resolved on the basis of a settlement and "there was no specific finding regarding the level of net power supply costs reflected in base rates."<sup>162</sup> The Commission found that there was no basis to find that the NPC expense level included in that prior rate case was an appropriate baseline for deferral.<sup>163</sup> The Commission found that it would be "arbitrary . . . to simply accept the untested level of base power costs the Company proposes."<sup>164</sup>

68. Similarly, in this case the parties resolved the 2008 GRC on a black box settlement that did not specify an agreed-upon level of REC revenues for 2009.<sup>165</sup> Based on the Commission's order in Docket UE-020417, the lack of a baseline for REC revenue for 2009 means there is no reasonable way to measure a deferral of REC revenues for that period. Rather than find that REC revenues should be measured against a zero baseline (as proposed by Staff), the Commission should determine that any request for deferral of 2009 REC revenues would be improper because the baseline assumption would be arbitrary and therefore "not a sound basis upon which to make decisions affecting rates, or even just deferred accounting."<sup>166</sup> The implications of Staff's proposal that a black box settlement establishes a zero baseline would mean that PacifiCorp is entitled to a rate credit for all of its hydro-related power costs in 2010, rather than the difference between what was filed and what actually occurred.

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<sup>161</sup> *Re Petition of PacifiCorp for an Accounting Order Authorizing Deferral of Excess Net Power Costs*, Docket UE-020417, 6<sup>th</sup> Supp. Order (July 15, 2003).

<sup>162</sup> *Id.* ¶ 25.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.* ¶ 32.

<sup>165</sup> Kelly, Exh. No. ALK-2CT, 7:13-16.

<sup>166</sup> *Re Petition of PacifiCorp for an Accounting Order Authorizing Deferral of Excess Net Power Costs*, Docket UE-020417, 6<sup>th</sup> Supp. Order ¶ 27 (July 15, 2003).

**c. Using a Past Test Year to Establish Future Rates is Standard Ratemaking Practice, Not an Exception to the Rule Against Retroactive Ratemaking.**

69. Staff claims an accounting petition is not necessary for the Commission to address recovery of REC revenues as proposed by Staff because “the REC revenues at issue are before the Commission in this case, which is based on a test period beginning January 1, 2009.”<sup>167</sup> Staff appears to be making the same argument it did in briefing in the prior phase of this case—that it is not retroactive ratemaking for the Commission to include in rates revenues from the 2009 historic base period because “[t]his is not a case where a party seeks regulatory treatment of costs incurred prior to a test period.”<sup>168</sup> Staff’s argument ignores its prior admission that PacifiCorp REC revenues have always been forecast to match the forecast NPC period. It also ignores the basic rule against double counting a cost or revenue item in rates, and implies that the Commission could simultaneously order both an historic (2009) and forecast (2011) approach to a single revenue item in one case. In any event, Staff’s argument pertains only to the 2009 historic base period and does not provide any support for its proposal for retroactive collection of 2010 REC revenues.

70. Specifically, Staff’s testimony acknowledges that since Docket UE-080220, the Commission has set rates for the Company using a forecast level of REC revenues for the rate effective period.<sup>169</sup> In addition, Staff offset the 2010 REC revenues with the forecast of REC revenues stated in the 2009 GRC order.<sup>170</sup> As outlined above, all of the facts show that the REC rate credit now in place is based upon a forecast for the rate effective period and is expressly subject to true up against actual REC revenues for the rate effective period.

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<sup>167</sup> Breda, Exh. No. KHB-7TC 14:17-21.

<sup>168</sup> Initial Brief on Behalf of Commission Staff ¶ 32.

<sup>169</sup> Breda, Exh. No. KHB-7TC 11:3-4.

<sup>170</sup> Breda, Exh. No. KHB-7TC 6:23-24.

71. Notwithstanding this undisputed record, Staff and ICNU/PC propose to re-establish 2009 REC revenue levels in this proceeding (ignoring the 2008 GRC Stipulation and order which already set rates for this period) using a 2009 historic “actual” level. However, both Staff and ICNU/PC include additional imputed revenues—revenues that by their own admission did not actually occur in 2009.<sup>171</sup> Staff and ICNU/PC have not addressed the propriety of seeking both an historic and forecast revenue level for the same revenue item in one case. There is no precedent for such an approach, which on its face double-counts the revenue item and imputes additional revenue that was not actually received.
72. On top of this, the parties also propose to capture the actual and imputed levels of 2010 revenues through this proceeding, even though 2010 is neither the test period nor the rate effective period in this proceeding.<sup>172</sup> This results in the confiscation of three years of REC revenues, some of which never actually occurred, in a single rate case proceeding—the historic test year, the forecast rate period and the time period in between.<sup>173</sup> There is no other cost or revenue element in this rate case that triple-counted the element in this manner.<sup>174</sup> If applied even-handedly, the precedent established by adopting Staff and ICNU/PC’s approach would permit the Company to establish a dollar-for-dollar balancing account for differences between forecast and actual plus imputed NPC from its last two GRCs, simultaneously with establishing a new forecast NPC baseline in rates and a dollar-for-dollar balancing account for the rate effective period and all periods going forward.<sup>175</sup>
73. Under Staff’s interpretation of the historic test year, all revenues and costs from the test period are effectively exempt from the doctrine against retroactive ratemaking. Staff’s

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<sup>171</sup> See Breda, Exh. No. KHB-7TC 6:22-23; Schoenbeck, Exh. No. DWS-5CT 5:13-20.

<sup>172</sup> Kelly, Exh. No. ALK-2CT 3:5-7.

<sup>173</sup> *Id.* at 3:5-10.

<sup>174</sup> *Id.* at 3:10-11.

<sup>175</sup> *Id.* at 4:1-12.



interpretation of retroactive ratemaking would allow for a true up in a future period of all revenues received and costs incurred in the test period. Such a result is antithetical to Washington's traditional approach to ratemaking and should be rejected.

**d. The Commission Should Reject Staff's and ICNU/PC's Proposals to Adopt Ad Hoc Exceptions to the Doctrine Against Retroactive Ratemaking.**

74. As discussed above, retroactive ratemaking bars the inclusion of past REC revenues in future rates and the primary exception to retroactive ratemaking, deferred accounting, does not apply in this case. Therefore, Staff's and ICNU/PC's proposals require the Commission to create an ad hoc exception to the doctrine against retroactive ratemaking. Not only would such an outcome raise constitutional concerns, but it would also be inconsistent with the Commission's rules and precedent.

75. First, allowing retroactive recovery of revenues on an ad hoc basis would raise the concern raised by the Supreme Court in *Duquesne v. Barasch*, 488 US 299, 314 (1989) : “[a] State’s decision to switch arbitrarily back and forth between methodologies in a way which required investors to bear the risk of bad investments at some times while denying them the benefit of good investments at others would raise serious constitutional questions.”<sup>176</sup> As just noted, Staff and ICNU/PC are requesting that the Commission allow recovery not only of REC revenues expected in the rate effective period, but for two prior years. This unprecedented approach is exactly the type of arbitrary ratemaking methodology referenced by the Supreme Court as raising serious constitutional concerns.

76. Second, as discussed above, the Commission's rules and precedent do not provide for retroactive recovery of revenues in the absence of a deferral application. Staff includes in

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<sup>176</sup> *Duquesne v. Barasch*, 488 US 299, 314 (1989).

testimony reference to “examples in which the Commission has approved the amortization of a specific item or separate tariff treatment of a specific item” to support Staff’s claim that their retroactive recovery of REC revenues is appropriate.<sup>177</sup> The examples Staff cites are irrelevant to the ratemaking considerations at issue in this case. No party is arguing that amortization or separate tariffs are inappropriate methods for including a cost or revenue in rates. The issue is whether the particular cost or revenue can be included in rates to begin with. None of the orders cited by Staff involve what Staff and ICNU/PC are proposing here: a retroactive tracking of two years of historic actual revenues without a deferral, on top of a forward looking adjustment.

**3. The Filed Rate Doctrine Prohibits Changing the Rates Established in the 2008 and 2009 GRC Orders**

77. The filed rate doctrine prohibits changing the rates established in the 2008 and 2009 GRC orders. Under RCW 80.28.080,, a utility must charge the rates specified in its rate schedule filed and in effect at the time and cannot “directly or indirectly refund or remit in any manner or by any device any portion of the rates or charges so specified.” The Commission described the filed rate doctrine as providing that “[s]o long as a final, nonprovisional rate is in place it can be changed only prospectively.”<sup>178</sup> As a result, ordering refunds of a nonprovisional rate would violate the filed rate doctrine.<sup>179</sup>

78. The Commission rejected a request by Puget to retroactively alter a tariffed rate by citing to RCW 80.28.080 and the doctrine against retroactive ratemaking.<sup>180</sup> In that case, Puget filed a petition to unwind the accounting petition relevant to a conservation incentive credit.<sup>181</sup> Puget’s proposal would have the effect of changing the rate credit included in that tariff by deferring

<sup>177</sup> See Breda, Exh. KHB-7TC 3:21-5:5.

<sup>178</sup> *Re. Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Docket UE-981238, 4<sup>th</sup> Supp. Order (Apr. 5, 1999).

<sup>179</sup> *Id.*

<sup>180</sup> *Re. Application of Puget Sound Energy for Authorization Regarding the Deferral of the Net Impact of the Conservation Incentive Credit Program*, Docket UE-010410, Order (Nov. 9, 2001).

<sup>181</sup> *Id.* ¶ 2.

amounts paid to customers under that schedule and charging those amounts back to customers through a different schedule.<sup>182</sup> The Commission found that this request amounted to a proposal “to reach back in time to alter the tariffed . . . rate” and rejected the proposal.<sup>183</sup> The Commission cited both RCW 80.28.080, which prohibits a utility from charging a rate for service that deviates from its tariffed rate, and the doctrine against retroactive ratemaking in reaching its conclusion.<sup>184</sup>

79. The proposals of Staff and ICNU/PC also seek to reach back in time to alter the tariffed rates ordered by the Commission in the 2008 and 2009 GRC orders. As the Commission did in the case of Puget’s proposal, the Commission should find that the filed rate doctrine embodied in RCW 80.28.080 prohibits this result.

**4. Orders in the 2008 and 2009 GRCs Preclude Retroactive Recovery of REC Revenues.**

**a. Staff’s and ICNU/PC’s Proposals Constitute Unlawful Collateral Attacks on the 2008 and 2009 GRC Orders.**

80. Staff and ICNU/PC indirectly attack stipulations to which they are parties and the Commission’s final orders in the 2008 and 2009 GRCs by proposing to retroactively account for revenues that were considered by the parties and the Commission in those rate cases. The Commission should reject Staff’s and ICNU/PC’s proposals as improper collateral attacks on the Commission’s 2008 and 2009 GRC orders.

81. The Commission’s statutes expressly set forth the procedure by which a rate ordered by the Commission may be altered. Under RCW 80.04.210, the Commission may “at any time, upon notice to the public service company affected, and after opportunity to be heard as provided in the case of complaints rescind, alter or amend any order or rule made, issued or promulgated

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<sup>182</sup> *Id.* ¶ 8.

<sup>183</sup> *Id.* ¶ 7.

<sup>184</sup> *Id.*

by it.” The statutes do not contemplate an indirect attack on a rate order by retroactively accounting for a revenues evaluated in a prior order in a later order. Moreover, as a general proposition, collateral attacks on Commission rate orders are prohibited.<sup>185</sup> Staff and ICNU/PC have not proposed that the Commission amend the 2008 and 2009 GRC orders under RCW 80.04.210. The Commission should reject their attempt to attack those orders indirectly, as the ALJ did in dismissing ICNU/PC’s complaint.<sup>186</sup>

82. Not only does the Commission’s statute governing the amendment of orders foreclose Staff’s and ICNU/PC’s proposals, but the proposals are antithetical to the ratemaking framework governing the Commission. Under *Federal Power Commission v. Hope Natural Gas*, “[u]nder the statutory standard of ‘just and reasonable’ it is the result reached not the method employed which is controlling. . . . The fact that the method employed to reach that result may contain infirmities is not then important.”<sup>187</sup> Staff’s and ICNU/PC’s proposals are inconsistent with the Supreme Court’s finding that it is the overall result of a rate order that is the determinative factor in reviewing the order, not the methods used. If Staff and ICNU/PC had appropriately challenged the 2008 and 2009 GRC orders under RCW 80.04.210, the Commission would have had the opportunity to evaluate the validity of the orders as a whole, as is consistent with the ratemaking framework used by the Commission. If the Commission had done so, as the ALJ observed in dismissing the ICNU/PC REC complaint, “it is at least equally likely that the final

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<sup>185</sup> See e.g. *Re Application of Portland Gen. Elec. Co. for an Investigation into Least Cost Plant Retirement*, Docket DR 10 *et al.*, Order No. 08-487 at 8 (O.P.U.C. Sept. 30, 2008) (“Once final, a Commission rate order is not subject to collateral attack.”); *Neb. Pub. Advocate v. Neb. Pub. Serv. Comm’n*, 279 Neb. 543 (2010) (Public Advocate’s complaint was impermissible collateral attack on prior rate order because it raised an issue that should have been raised in the rate case); *Anchor Lighting v. So. Calif. Edison*, Case 02-03-060, Decision 03-08-036, 2003 WL 22118931 (C.P.U.C. Aug. 21, 2003) (complaint dismissed as collateral attack, which is an “attempt to impeach the judgment or order in a proceeding other than that in which the judgment was rendered.”).

<sup>186</sup> Administrative Law Judge’s Initial Order ¶ 41 (“[Allowing ICNU and Public Counsel to reopen the docket to relitigate the issues they could have litigated then] would be to allow an improper collateral attack on Order 09 in Docket UE-090205.”)

<sup>187</sup> 320 U.S. 591, 602 (1944).

result would be an overall increase in revenue greater than the [increase] to which the parties agreed.”<sup>188</sup>

**b. Any Amendment to the 2008 and 2009 GRC Orders Could be Prospective Only, and Therefore Moot Because of the 2010 GRC Order.**

83. Even if Staff and ICNU/PC had challenged the 2009 and 2010 GRC orders under RCW 80.04.210, because the Commission cannot establish retroactive rates, any amendment to these orders is now moot. The rates established in the 2009 and 2010 rate orders have been supplanted by rates in this case as of April 3, 2011. As the ALJ explained in the Initial Order Dismissing Complaint, “it is impossible at this juncture to achieve a meaningful result by amending Order 09.”<sup>189</sup> The appropriate remedy under the Commission’s statutes—amendment of the 2008 and 2009 GRC orders under RCW 80.04.210—is therefore not timely.

**5. Including Past REC Revenues in Future Rates without Reflecting Associated Past NPC Costs Constitutes Improper Single-Issue Ratemaking and Violates the Matching Principle.**

84. The Commission disfavors single-issue ratemaking because it violates the matching principle.<sup>190</sup> The matching principle requires “revenues and costs [to be] balanced at a common point in time, i.e. a rate case, to determine fair, just, reasonable and sufficient rates.”<sup>191</sup> Single issue ratemaking violates this principle because it sets rates based upon an examination of only one component.<sup>192</sup>

<sup>188</sup> Administrative Law Judge’s Initial Order ¶ 43.

<sup>189</sup> *Id.* ¶ 35.

<sup>190</sup> *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy Co.*, Dockets UE-090704 and UG-090705, Order 10 ¶ 7 (Jan. 8, 2010); *Wash. Utils. & Transp. Comm’n v. PacifiCorp*, Docket UE-061546, Order 08 at ¶ 152 (June 21, 2007) (“True-up mechanisms, a form of single issue ratemaking, are not generally favored in utility ratemaking.”).

<sup>191</sup> *Wash. Utils. & Transp. Comm’n v. Avista*, Docket UG-060518, Order 04 at ¶ 19 (Feb. 1, 2007).

<sup>192</sup> *See Re U.S. West Comm., Inc.*, Docket UT-920085, 3<sup>rd</sup> Suppl. Order. At 5 (Apr. 15, 1993) (“without considering other aspects of the company’s rate structure [this] would amount to single issue ratemaking”); *Re US West Communications, Inc.*, Docket UT-970766, 14<sup>th</sup> Suppl. Order at 5 (Mar. 24, 1998) (“the proper means to examine [revenues and expenses] is a general rate case”); *MCI Telecommunications Corp. v. GTE Northwest, Inc.*, Docket UT-970653, Second Suppl. Order (Oct. 22, 1997) (“The Commission has consistently held that these questions are

85. No party can reasonably argue that Staff's and ICNU/PC's proposals do not constitute single-issue ratemaking because they seek a retroactive adjustment for REC revenues without accounting for associated cost elements. Specifically, it is a violation of the matching principle to account for RECs but not account for the NPC associated with those RECs, because RECs and megawatt hours are generated from the same source at the same time.<sup>193</sup> Public Counsel itself has argued that "REC revenues are directly related to the proper analysis of power costs . . . . Joint Movants do not explain why it is appropriate to update PSE power costs as was done in the most recent supplemental filing, without updating related revenues."<sup>194</sup> Similarly, Staff and ICNU/PC have not explained why it is appropriate to retroactively account for REC revenues but not do so for the NPC associated with generating those revenues.

86. If the Commission adopts Staff's or ICNU/PC's proposal for including additional REC revenues from 2009 and 2010 in rates, the Company requests that the Commission offset these revenues with the under forecast in NPC that resulted from lower than expected hydro conditions during this same time period. As explained in the testimony of Andrea Kelly, in 2009 and 2010, actual hydro conditions were less favorable than the level included in rates.<sup>195</sup> The Washington-allocated cost to the Company of this lower hydro generation was \$7.9 million in 2009 and \$2.4 million in 2010, for a total increase to NPC of \$10.3 million.<sup>196</sup>

87. To avoid establishing an unfair and one-sided policy, if the Commission finds that retroactive recovery of REC revenues is appropriate, it should find that retroactive recovery of

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resolved by a comprehensive review of the company's rate base and operating expenses, determining a proper rate of return, and allocating rate changes equitably among ratepayers.");

<sup>193</sup> Duvall, Exh. No. GND-5T 6:12-16.

<sup>194</sup> *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Docket UE-090704, Order 10 ¶ 7 (Jan. 8, 2010) (quoting Public Counsel's Motion to Strike).

<sup>195</sup> Kelly, Exh. No. ALK-2CT 5:13-14. In 2009 hydro generation was approximately 105 average megawatts below the hydro generation included in the NPC study used in Docket UE-080220 and the 2010 hydro generation was approximately 23 average megawatts below the hydro generation included in the NPC study used in Docket 090205. *Id.* at 5:14-18; Kelly, Exh. No. ALK-3.

<sup>196</sup> Kelly, Exh. No. ALK-2CT 5:18-20.

matching NPC-related costs is also appropriate. While the Company did not file a deferred accounting petition requesting recovery of increased NPC associated with lower hydro generation, neither did Staff or ICNU/PC file a deferred accounting petition associated with REC revenues. In fact, Staff states that if the Company was interested in requesting recovery of additional power costs, they could do so under Staff's theory.<sup>197</sup>

**B. Staff's and ICNU/PC's Calculations of 2009 and 2010 REC Revenues Are Incorrect.**

88. Although the Company believes that the Commission should reject Staff's and ICNU/PC's proposals to reflect in rates REC revenues received in 2009 and 2010 for the reasons described above, if the Commission accepts either proposal, it should made the modifications outlined below. Staff's proposal in particular is problematic because it has changed in each subsequent filing, in each case increasing the amount of REC revenues.<sup>198</sup>

**1. The Proposed Retroactive Change to the Allocation Method for 2009 and 2010 RECs Should Be Rejected.**

89. Staff and ICNU/PC propose changing the allocation of REC revenues to Washington from the methodology used in previous filings and in the prior phase of this case. Their proposal is inappropriate for a number of reasons and should be rejected. First, the allocation method proposed by the Company is the same method used in the 2009 and 2010 Commission Basis Reports, all previous Quarterly REC Revenue Reports provided to Staff and ICNU/PC, and the Company's rebuttal revenue requirement filing in this case.<sup>199</sup> In fact, the REC revenues proposed by Staff to be included in rates in the previous phase of this case were calculated using the allocation method proposed by PacifiCorp.<sup>200</sup> In addition, although Staff states that Staff "discovered" that PacifiCorp banked certain RECs for compliance in Oregon and California

<sup>197</sup> Breda, Exh. No. KHB-7TC 14:17-23.

<sup>198</sup> Dalley, Exh. No. RBD-28CT 13:11-20; Kelly, Exh. No. ALK-2CT 7:17-8:17.

<sup>199</sup> Dalley, Exh. No. RBD-28CT 7:12-18.

<sup>200</sup> *Id.* 7:19-8:3.

before allocating to Washington,<sup>201</sup> this is not a new discovery.<sup>202</sup> Nearly three years ago PacifiCorp explained to Staff, ICNU, and Public Counsel that it was banking Oregon and Washington RECs.<sup>203</sup> Retroactive reallocation of REC revenues is inappropriate, especially given the fact that the Company has no opportunity to reallocate other cost or revenue components from those periods.<sup>204</sup>

**2. 2009 REC Revenues Should Be Offset by the Amount of REC Revenues Included in Rates in that Year.**

90. Staff's and ICNU/PC's calculation of 2009 REC revenues inappropriately excludes an offset for REC revenues included in rates in that year. As discussed above, based on Commission precedent, the fact that there is no approved REC baseline against which actual REC revenues can be measured means that deferral or true up of such revenues should be rejected by the Commission, even if a party had properly requested a deferral. However, if the Commission decides to include a retroactive credit in rates for 2010 REC revenues, it should reduce those revenues by the \$576,254 of REC revenues included in the Company's filing in Docket UE-080220.<sup>205</sup>

91. Staff justifies exclusion of the REC revenues included in rates for 2009 on the basis that the stipulation in Docket UE-080220 was a black box settlement.<sup>206</sup> Staff's proposal is inappropriate because it assumes no REC revenues were included in rates without any supporting evidence. In contrast, the fact that the Company included REC revenues in its initial filing in that case indicates that some level of REC revenues was included in rates. No party objected to the Company's estimate of \$576,254 for REC revenues in 2009 and that amount should be

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<sup>201</sup> Breda, Exh. No. KHB-7TC 7:9-13.

<sup>202</sup> Dalley, Exh. No. RBD-28CT 8:7-21.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.* at 11:3-14.

<sup>205</sup> Kelly, Exh. No. ALK-2CT 7:6-12.

<sup>206</sup> *Id.* at 7:13-16.



credited against REC revenues if the Commission orders a retroactive credit of REC revenues for that year.

**3. Schedule 95 Should Remain as Ordered by the Commission and Should Change Based on the Forecast and True Up Each Year.**

92. Staff proposes that the Commission change the REC tracking mechanism from that originally ordered to one based on actual REC revenues, not a forecast and true-up.<sup>207</sup> ICNU/PC agree with this proposal.<sup>208</sup> Staff claims that forecasts of RECs have been inaccurate, so actual REC revenues should be reflected in the credit.<sup>209</sup> No party has ever challenged the REC forecasts of the Company including the REC forecast contained in the Company's compliance filing for the rate effective period.<sup>210</sup> Staff and ICNU/PC also propose that the rate remain the same in Schedule 95 until the balancing account is exhausted, or until ongoing REC sales indicate a different credit rate is appropriate.<sup>211</sup>
93. Staff's and ICNU/PC's proposal is unreasonable and unsupported. If the Commission orders retroactive recovery of 2009 and 2010 RECs, the Company will need to record the full amount of the adjustment in the year in which the liability is created.<sup>212</sup> Spreading the return of REC revenues over the three to four years that would result under Staff's and ICNU/PC's proposal further increases the financial burden on the Company.<sup>213</sup> There is also no support for modifying the forecast/true up nature of the REC tracking mechanism on a prospective basis.

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<sup>207</sup> Breda, Exh. No. KHB-7TC 10:11-14.

<sup>208</sup> Schoenbeck, Exh. No. DWS-5CT 8:12-16.

<sup>209</sup> Breda, Exh. No. KHB-7TC 11:6-8.

<sup>210</sup> Kelly, Exh. No. ALK-2CT 5:2-3.

<sup>211</sup> Breda, Exh. No. KHB-7TC 10:14-15; Schoenbeck, Exh. No. DWS-5CT 9:6-12.

<sup>212</sup> Kelly, Exh. No. ALK-2CT 11:18-20; Dalley, Exh. No. RBD-28CT 3:3-13.

<sup>213</sup> Kelly, Exh. No. ALK-2CT 11:20-21.

**4. Staff's Proposal Inappropriately Mixes and Matches Allocation Methods.**

94. The third iteration of Staff's proposal inappropriately mixes and matches the previous two allocation methods proposed by Staff.<sup>214</sup> Staff's third method includes an allocation of revenues from RECs booked in 2009 or 2010, which includes RECs generated in 2008. Staff's basis for this method is that accounting principles require the consideration of when revenue is realized and earned.<sup>215</sup> However, only a portion of Staff's proposal is based on this principle. Staff does not apply this principle to the allocation method for the calculation of imputed revenues for RECs held for compliance.<sup>216</sup> By mixing and matching allocation methods, Staff increases 2009 and 2010 REC revenues over what they would be if Staff consistently applied the forward-looking methodology that Staff claims is appropriate.<sup>217</sup> Staff's arbitrary proposal further undermines the validity of Staff's overall approach and should be rejected.

**5. ICNU's Proposal Inappropriately Imputes Revenues for Sales in 2009 and 2010.**

95. Finally, ICNU/PC's proposal should be rejected because it imputes revenues for sales in 2009 and 2010 that did not actually occur. ICNU/PC's calculation assumes that the Company could have sold 100 percent of RECs held for compliance in 2009 and 2010.<sup>218</sup> ICNU/PC's proposal ignores the fact that the Company did not actually sell 100 percent of RECs in 2009 and 2010.<sup>219</sup> In 2009, the Company sold [REDACTED] of its marketable west control area Washington RPS eligible RECs and in 2010 the Company sold [REDACTED].<sup>220</sup> Even more unreasonable is assuming the Company sold 100 percent of its marketable west control area

<sup>214</sup> *Id.* at 8:7-14.

<sup>215</sup> Breda, Exh. No. KHB-9TC 3:5-9.

<sup>216</sup> Dalley, Exh. No. RBD-28CT 14:22-15:1.

<sup>217</sup> *Id.* at 15:2-4.

<sup>218</sup> *Id.* at 18:16-17.

<sup>219</sup> Dalley, Exh. No. RBD-28CT 18: 17-18.

<sup>220</sup> *Id.* at 18:19-21.

Washington RPS non-eligible RECs. In the case of non-eligible RECs, the Company sold only ██████████ in 2009 and ██████████ in 2010.<sup>221</sup> ICNU's assumption that the Company could have sold 100 percent of RECs is in direct conflict with the evidence in this case.

## V. CONCLUSION

96. To adopt Staff's and ICNU/PC's retroactive REC tracker proposals, the Commission would have to disregard or distinguish numerous, fundamental Commission policies and precedents, turn a blind eye to the undisputed facts about PacifiCorp's chronic under earning, and be willing to take back most of the revenue requirement increase the Commission ordered in this case just six months ago. Such a decision would have harsh consequences for PacifiCorp, eliminating any possibility that PacifiCorp will earn its allowed rate of return in the rate effective period. It would also mark the beginning of a new and unstable regulatory paradigm, one that encourages parties to litigate single issues when actual cost or revenues do not match the levels set in rates.

97. The Commission has the discretion to address the recovery of REC revenues in a more constructive and equitable manner by: (1) for the historical period, acknowledging that REC revenues have already been accounted for in base rates and are not subject to further litigation; and (2) for the rate effective period, adopting PacifiCorp's REC tracker proposal. This approach reinforces the Commission's strong stance against retroactive ratemaking and supports PacifiCorp's continuing efforts to pursue strategies that reduce costs and benefit both shareholders and customers.

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<sup>221</sup> *Id.* at 18:19-19:2.

98. Based upon the record in this proceeding and the legal arguments presented in this brief, the Company respectfully requests that the Commission adopt its forward-looking REC tracking proposal and reject Staff's and ICNU/PC's retroactive REC tracking proposals.

DATED: November 4, 2011.

Respectfully Submitted,

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**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

Complainant,

vs.

PACIFICORP d.b.a. PACIFIC POWER,

Respondent.

**DOCKET UE-100749  
PHASE 2**

**PACIFICORP'S  
REPLY BRIEF  
ON RATE TREATMENT FOR  
RENEWABLE ENERGY CREDIT REVENUES**

**November 18, 2011**

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## I. INTRODUCTION

1. In their briefs filed on November 4, 2011, in Phase 2 of this proceeding, Commission Staff (Staff), Public Counsel, and the Industrial Customers of Northwest Utilities (ICNU) (collectively, Responding Parties) provide various justifications for retroactive recovery of PacifiCorp's (the Company) revenues from the sale of renewable energy credits (RECs) in 2009 and 2010.<sup>1</sup> They claim that such recovery does not constitute retroactive ratemaking, and even if it did, the Commission should make an exception to the rule against retroactive ratemaking in this case.
2. The Commission's precedent is clear that retroactive ratemaking is illegal, and the Commission has always applied this rule equally to utility and customer interests. The Responding Parties' REC tracker proposals are irreconcilable with this historic precedent and practice. Adoption of the Responding Parties' approach would result in unjust and unreasonable rates in this case and undermine regulatory certainty to the detriment of both utilities and customers in the future.
3. A running theme in Staff's brief is that it is "too late" for the Company to object to Staff's claim for REC revenues from 2009 and 2010.<sup>2</sup> But Staff itself has raised a number of new claims and issues in this phase of the docket, notably including the argument that the Commission should now retroactively impute REC revenues. All of PacifiCorp's arguments are

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<sup>1</sup> Post Hearing Brief on Behalf of Commission Staff (Staff's Phase II Opening Brief); Phase II Opening Brief of Public Counsel (Public Counsel's Phase II Opening Brief); Phase II Opening Brief of the Industrial Customers of Northwest Utilities (ICNU's Phase II Opening Brief).

<sup>2</sup> Staff's Phase II Opening Brief ¶¶ 1, 23, 25. Specifically, Staff claims that the Company is foreclosed from arguing against including 2009 and 2010 REC revenues in rates without offsetting costs being included, and in favor of an earnings test before doing so. Staff's position is unreasonable, as the Commission specifically left the issue of whether 2009 and 2010 REC revenues should be included in rates to this phase of the case.

consistent with Order 06<sup>3</sup> and with Washington law requiring that the Commission evaluate rates to determine whether they are just and reasonable.

4. Staff also mischaracterizes the Company's legal and policy arguments against retroactive recovery of REC revenues as "erecting as many other roadblocks as possible" to crediting REC revenues to customers.<sup>4</sup> This argument ignores the fact that customers have received a REC revenue credit in PacifiCorp's rates since late 2008. It also unfairly attacks the Company for meeting its responsibility to the Commission to raise the serious legal and policy infirmities in the Responding Parties' REC tracker proposals, especially when the adoption of their proposals would eliminate the Company's ability to earn its rate of return.

5. The Commission's Order 06 clearly requested a detailed proposal for operation of a REC tracking mechanism going forward.<sup>5</sup> PacifiCorp's REC tracker proposal comprehensively responds to this request. In contrast, the Responding Parties have submitted tracker proposals designed to recover as much retroactive REC revenue as possible, without fully considering how these proposals will operate on a forward-looking basis. As explained in the Company's response to the Commission's Bench Request 8, Staff only applied its REC tracker calculation to 2009 and 2010 REC revenues and failed to address how its REC tracker proposal could be applied on a forward-looking basis now that the Company is holding RECs for Washington renewable portfolio standard (RPS) compliance.<sup>6</sup> This Commission should reject Responding Parties' REC tracker proposals not just because they are illegal and unfair, but also because in Staff's case it is unworkable.

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<sup>3</sup> *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket No. UE-100749, Order 06 (Mar. 25, 2011) [hereinafter "Order 06"].

<sup>4</sup> Staff's Phase II Opening Brief ¶ 22.

<sup>5</sup> Order 06 ¶ 208.

<sup>6</sup> *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket No. UE-100749, PacifiCorp's Response to Commission Bench Request 8 (Nov. 14, 2011).

6. The Commission's ultimate charge is to "regulate in the public interest."<sup>7</sup> The Commission has found that "[r]egulating in the public interest means regulating consistently with laws, rules, and pertinent prior decisions. Doing so provides certainty, consistency, and fairness to both utility companies and their customers."<sup>8</sup> To approve the Responding Parties' proposals for recovery of 2009 and 2010 REC revenues, the Commission must either contort its ratemaking policies to find that the proposals do not constitute retroactive ratemaking, or develop an unprecedented and one-sided exception to the rule against retroactive ratemaking. Such outcomes are inconsistent with the Commission's mandate to regulate in the public interest to ensure "certainty, consistency, and fairness."

## II. DISCUSSION

### A. Staff, Public Counsel, and ICNU Unpersuasively Attempt to Distort Normal Test Year Conventions to Evade the Rule against Retroactive Ratemaking.

7. The Responding Parties claim that allowing REC revenues from 2009 through 2011 in rates in this case does not constitute retroactive ratemaking because certain REC revenues were included in the 2009 test period in this proceeding.<sup>9</sup> This "test period" argument is inconsistent with the Commission's ratemaking process and the evidence in this case. As the Company explained in its Initial Post-Hearing Brief, the Commission makes known and measurable changes to test period results to develop rates for the rate effective period.<sup>10</sup> To be known and measurable, adjustments to test year operations must be known to have occurred during the test

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<sup>7</sup> RCW 80.01.040.

<sup>8</sup> *Wash. Utils. & Transp. Comm'n v. Verizon NW, Inc.*, Docket No. UT-040788 Order 11 ¶ 140 (Oct. 15, 2004).

<sup>9</sup> Staff's Phase II Opening Brief ¶ 10; Public Counsel's Phase II Opening Brief ¶ 10; ICNU's Phase II Opening Brief ¶ 9.

<sup>10</sup> *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-090134 *et al.*, Order 10 ¶¶ 41-44 (Dec. 22, 2009).

year *and* “[i]t must also be demonstrated (*i.e., known*) that the effect of the event will be in place during the 12-month period when rates will likely be in effect.”<sup>11</sup>

8. In this case, the Responding Parties propose including three years of REC revenues in the 12-month rate effective period—actual and imputed 2009 and 2010 REC revenues on top of the 2011 rate effective period REC revenues now included in rates.<sup>12</sup> There is no evidence in the record that demonstrates that REC revenues for the 12-month period beginning on April 3, 2011 will be over \$21 million, which is what the Responding Parties have proposed including in rates for the rate year.

9. In addition to the fundamental problem associated with doubling up 2009 historic and 2011 projected REC revenues, the Responding Parties’ test period argument does not even purport to address incorporation of 2010 REC revenues into current rates. Nowhere do the Responding Parties explain why, if 2009 REC revenues can be incorporated in future rates because they were included in the test period, 2010 REC revenues, which are not in the test period or the rate effective period, can be incorporated in future rates.

10. The Responding Parties’ argument is also inconsistent with the evidence in this case because it assumes that the \$4.8 million of REC revenues now in rates reflects 2009 REC revenues and not a forecast of REC revenues for the rate effective period.<sup>13</sup> Most fundamentally, this interpretation is inconsistent with the Commission’s order in this proceeding. The Commission accepted “for purposes of establishing 2011 credits the amount of REC revenues to which Staff and PacifiCorp agree, approximately \$4.8 million,”<sup>14</sup> and authorized a true up of these initial credits with actual REC revenues received during the 12-month rate effective

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<sup>11</sup> *Id.* ¶ 45.

<sup>12</sup> Kelly, Exh. No. ALK-2CT 3:2-11.

<sup>13</sup> See Staff’s Phase II Opening Brief ¶ 6.

<sup>14</sup> Order 06 ¶ 204.

period.<sup>15</sup> The Responding Parties' interpretation would have the Commission ordering a true up of REC revenue credits paid in the 2011-2012 rate year to 2009 REC revenues, which on its face is nonsensical.

11. Second, the Responding Parties' interpretation is inconsistent with testimony of PacifiCorp, Staff, and ICNU in this case. Staff wrongly claims that the "2009 REC revenues at issue here are in the same test period as the other costs and revenues at issue in this case."<sup>16</sup> It is undisputed, however, that the Company's net power costs in this case were based upon a forecast for the 2011 rate effective period.<sup>17</sup> The record is also clear that the REC revenues included in the Company's rebuttal filing were based on a forecast for the 2011 rate effective period, consistent with the test period net power costs.<sup>18</sup>

12. In addition, Staff has acknowledged that the Company's 2008 general rate case (GRC) included a forecast of REC revenues for 2009.<sup>19</sup> This testimony is in direct conflict with Staff's current claim that "the Commission has not set rates using any of the 2009 REC revenues Staff calculated."<sup>20</sup> Given Staff's concession that the Commission set rates in 2008 covering 2009 REC revenues, it is unreasonable to find that the REC credit in this case was set using 2009 REC revenues.

13. ICNU's testimony provides further support for the fact that the \$4.8 million of REC revenues included in rates in this case reflects forecast REC revenues in the rate effective period, not historic 2009 REC revenues. ICNU's witness, Mr. Falkenberg, testified that his proposed REC adjustment was "a reasonable estimate of REC revenues allocated to Washington during

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<sup>15</sup> *Id.* ¶ 205.

<sup>16</sup> Staff's Phase II Opening Brief ¶ 10.

<sup>17</sup> Dalley, TR. 370:5-13; Duvall, Exh. No. GND-5T 2:11-20.

<sup>18</sup> *Id.*

<sup>19</sup> Breda, Exh. No. KHB-7TC 11:3-5.

<sup>20</sup> See Staff's Phase II Opening Brief ¶ 10.

the rate effective period,” noting that his calculation “is close to the 2009 actual REC revenues, but less than the most recent 12 months of data available.”<sup>21</sup>

14. Third, the Responding Parties’ position is inconsistent with the matching principle. As Public Counsel has previously argued: “REC revenue issues are directly related to the proper analysis of power costs. . . . [W]hen wind generation costs are included in the power costs sought to be recovered, proper ratemaking principles requires that revenues derived from the related RECs must also be considered. . . . Failure to take these known and measurable revenues into account would be a violation of the matching principle.” It would have been a violation of the matching principle to set rates in 2011-2012 using REC revenues from 2009 and net power costs from 2011-2012.<sup>22</sup>

15. The briefs of ICNU and Public Counsel rely on the Commission’s treatment of a contract buy-down in a 1999 Avista rate case as the primary authority in support of their test year argument.<sup>23</sup> The case is readily distinguishable, which may explain why Staff failed to argue the Avista contract buy-down precedent in its brief, despite having cited it in testimony. The Avista case addressed the proper rate treatment of a one-time contract buy-down payment received from an affiliate in the test period.<sup>24</sup> It does not address or provide any precedent for the most troubling aspects of the Responding Parties’ proposals: the retroactive restatement of a revenue item previously reflected in rates to capture actual and imputed revenues; the double or triple counting of a single test year revenue item; and the use of a test year theory to capture revenues (but not costs) from the intervening period between the test period and the rate effective period.

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<sup>21</sup> Falkenberg, Exh. No. RJF-1T 63:14-17.

<sup>22</sup> See Duvall, Exh. No. GND-5T 6:12-16.

<sup>23</sup> Public Counsel’s Phase II Opening Brief ¶¶ 8-10.

<sup>24</sup> *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets No. UE-991606 and UG-991607 ¶¶ 68-69, 75 (Sept. 29, 2000).

16. Public Counsel cites other Commission orders that it claims allowed recovery of test period and post-test period revenues and expenses.<sup>25</sup> Public Counsel's reference to the Puget Sound Energy, Inc. (Puget) production tax credit (PTC) tariff schedule does not support this claim. That tariff was established to credit PTCs associated with a facility that was not even in service when the Commission's order was issued and therefore operated on a prospective basis.<sup>26</sup> Public Counsel also relies on orders allowing the use of deferred accounting after notice by the Company.<sup>27</sup> None of these orders stand for the proposition cited by Public Counsel.

17. Finally, in briefing and testimony the Responding Parties claim that the Puget REC case stands for the proposition that all REC revenues should be returned to customers.<sup>28</sup> Their citation to the Puget REC case is misleading. The Responding Parties ignore the fact that the Commission found on equitable grounds to return less than all of the REC revenues at issue in that proceeding to customers.

**B. There is no Basis for Adoption of the Responding Parties' One-Sided, Ad Hoc Exceptions to the Rule against Retroactive Ratemaking.**

18. The Responding Parties argue that even if their proposals constitute retroactive ratemaking, the Commission should make an exception to the rule in this case. The Responding Parties propose various exceptions to the rule, none of which are supported by Washington precedent or the facts of this case.

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<sup>25</sup> Public Counsel's Phase II Opening Brief ¶ 10.

<sup>26</sup> *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Docket No. UE-050870, Order 04 ¶ 13 (Oct. 20, 2005).

<sup>27</sup> *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket No. UE-080220, Order 05 ¶ 11 (Oct. 8, 2008); *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket No. UE-090205, Order 09 ¶ 16 (Dec. 16, 2009). Public Counsel's reference to abandoned plant costs in Cause U-82-38 is addressed in paragraph 51 below.

<sup>28</sup> Breda, Exh. No. KHB-7TC 1:10-17; ICNU's Phase II Opening Brief ¶ 4, Public Counsel's Phase II Brief ¶ 3.



**1. The Responding Parties' Proposed Exceptions Undermine the Important Protections of the Rule Against Retroactive Ratemaking.**

19. The rule against retroactive ratemaking contains important protections for both customers and utilities.<sup>29</sup> As the Responding Parties note in their briefs, the rule against retroactive ratemaking ensures that customers pay rates that reflect the cost of service at the time the service is rendered.<sup>30</sup> The Responding Parties, however, ignore the fact that the rule provides reciprocal protections for utilities. The rule provides constitutional safeguards against confiscatory rates by ensuring that past profits are not used to reduce future rates.<sup>31</sup> The rule also ensures the regulatory certainty and long-term fairness that the Commission has found to be important in establishing rates.<sup>32</sup> The rule also bolsters investor confidence, thereby ensuring that utilities can attract capital.<sup>33</sup> The Responding Parties' characterization of the rule against retroactive ratemaking as a doctrine intended primarily to protect against utilities including past losses in future rates is inaccurate.

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<sup>29</sup> See *Re Portland Gen. Elec.*, DR 10, UE 88 and UM 989, Order No. 08-487 (OPUC 2008) (“The prospective nature of ratemaking protects both customer and utility interests. The rule against retroactive ratemaking is intended to ensure that customers are paying rates that reflect the cost of service at the time the service is rendered. Similarly, the rule protects utilities because the use of past profits to reduce future rates may violate constitutional safeguards against confiscatory rates.”). See also Stefan H. Krieger, *The Ghost of Regulation Past: Current Application of the Rule Against Retroactive Ratemaking in Public Utility Proceedings*, 1991 U. ILL. L. REV. 983, 1039 (1991) (“Even when a product is unregulated, the consumer is confident once he purchases a product that the merchant will not claim that he is liable for a retroactive price increase on the product. Similarly, a utility, like a merchant in the unregulated context, is confident that the consumer will not be able to obtain a refund of the amount paid.” (quoting *Spintman v. Chesapeake & Potomac Tel. Co.*, 225 A.2d 304, 308 (Md. 1969)).

<sup>30</sup> See *Re Portland Gen. Elec.*, DR 10, UE 88 and UM 989, Order No. 08-487 (OPUC 2008).

<sup>31</sup> See *id.*

<sup>32</sup> *Wash. Utils. & Transp. Comm'n v. Olympic Pipe Line Co.*, Docket No. TO-011472, 20<sup>th</sup> Supp. Order ¶ 119 (Sept. 27, 2002). See also, *Richter v. Fla. Power Corp.*, 366 So.2d 798, 799 (Fla.App. 1979) (the case cited by ICNU, which states “It is, of course, vital to both the regulated utility and the consumers that the PSC's rate orders be final.”).

<sup>33</sup> If investors could not rely on the rates fixed by commissions, “utilities would find it difficult to attract capital.” Stefan H. Krieger, *The Ghost of Regulation Past: Current Application of the Rule Against Retroactive Ratemaking in Public Utility Proceedings*, 1991 U. ILL. L. REV. 983, 1039 (1991). See also *City of Los Angeles v. Cal. Pub. Utils. Comm'n*, 7 Cal.3d 331, 358 (CA 1972) (“The adoption of a comprehensive scheme of public utility rate regulation involves numerous considerations, and it has been recognized that absolute equity must sometimes give way to the greater overall good, including the demands of *certainty and efficiency*.” (referring to the rule against retroactive ratemaking) (emphasis added)).

20. Staff has previously recognized the reciprocal nature of the rule against retroactive ratemaking.<sup>34</sup> In a recent Puget rate case, Puget proposed a regulatory liability to reflect past over-collections of operations and maintenance expenses from customers.<sup>35</sup> Staff witness Kathryn Breda testified that she removed the liability, which would have substantially reduced rates, “because it is retroactive ratemaking.”<sup>36</sup> Ms. Breda’s willingness to expressly address and apply the rule against retroactive ratemaking in the Puget case when it operated to benefit the utility is in stark contrast to this case where Ms. Breda’s testimony refused to even address the issue.<sup>37</sup>

21. The Responding Parties cite to cases from other jurisdictions to support their arguments in favor of applying an exception to retroactive ratemaking in this case.<sup>38</sup> As ICNU concedes, states apply the rule with varying degrees of strictness. Just as there are jurisdictions that allow exceptions to the rule against retroactive ratemaking, there are many states—Washington among them—in which the rule is applied strictly.<sup>39</sup>

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<sup>34</sup> Breda, Exh. No. KHB-14 at 37-38.

<sup>35</sup> *Id.* at 38.

<sup>36</sup> *Id.*

<sup>37</sup> Breda, Exh. No. KHB-7TC 12:15-17.

<sup>38</sup> See Staff’s Phase II Opening Brief ¶ 12; Public Counsel’s Phase II Opening Brief ¶ 18; ICNU’s Phase II Opening Brief ¶ 10.

<sup>39</sup> See, e.g., Stefan H. Krieger, *The Ghost of Regulation Past: Current Application of the Rule Against Retroactive Ratemaking in Public Utility Proceedings*, 1991 U. ILL. L. REV. 983, 1008 (“Not all courts, however, have adopted the ‘extraordinary loss or gain’ exception to the retroactivity rule. A number of courts have held to a strict construction of the rule and have concluded that commissions have the power to set rates prospectively only.”). See, e.g., *S.C. Elec. and Gas Co. v. Pub. Serv. Comm’n*, 272 S.E.2d 793, 795 (S.C., 1980) (“We are not persuaded by the fact the Commission referred to the refund here as an adjustment for extraordinary operating expenses. Semantics aside, the Commission’s action constituted retroactive rate-making . . . The result reached here may initially appear unjust to the retail customer and unduly generous to SCE&G. This is not the case. The crux of this issue is the firm principle that rate-making is prospective rather than retroactive.”); see also, *In re Elizabethtown Water Co v. N.J. Bd. of Pub. Util.*, 527 A.2d 354 (N.J., 1987) (the court overruled the commission’s order postponing the water company’s rate effective date in order to offset the water company’s unusual gains resulting from high water prices during a drought. The court stated that “[t]he orderly processes of ratemaking are necessarily present and prospective if ratemaking is to be effective.” (citations omitted)); *Re. Central Vt. Pub. Serv. Corp.*, 473 A.2d 1155, 1160 (Vt. 1984) (“We hold that, unless authorized by statute, a rate that requires consumers to pay for past deficits of a utility or that requires a utility to refund to consumers a portion of its previously earned profits constitutes illegal retroactive ratemaking.”).

22. The Responding Parties' arguments urging an exception to the rule against retroactive ratemaking in this case ignore the fact that the rule against retroactive ratemaking and its corollary, the filed rate doctrine, are embodied in Washington law. RCW 80.28.080 provides that when the Commission finds rates to be unjust or unreasonable, it shall determine the just and reasonable rates "to be thereafter observed and in force." The Commission has found that this statute requires that "with few exceptions . . . the Commission is charged with setting rates on a *prospective* basis."<sup>40</sup> RCW 80.28.080 requires that a utility charge the rates specified in its rate schedule filed and in effect at the time and cannot "directly or indirectly refund or remit in any manner or by any device any portion of the rates or charges so specified." These statutes are consistent with the fact that ratemaking is a legislative act and, like legislation, ratemaking is applied prospectively absent explicit legislative direction to the contrary.<sup>41</sup>

23. The Responding Parties cannot cite to any Washington case or order supporting an exception to the rule against retroactive ratemaking in this case. ICNU claims that the rule against retroactive ratemaking has been applied on a "contradictory, ad hoc and inconsistent" basis across jurisdictions.<sup>42</sup> This Commission has been steadfast and consistent in its approach to the rule and should decline the Responding Parties' invitation to move to an inconsistent and ad hoc approach.

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<sup>40</sup> *Re Application of Puget Sound Energy for Authorization Regarding the Deferral of the Net Impact of the Conservation Incentive Credit Program*, Docket No. UE-010410, Order Denying Petition to Amend Accounting Order (Nov. 9, 2001) (emphasis in original).

<sup>41</sup> *Re Portland Gen. Elec.*, DR 10, UE 88 and UM 989, Order No. 08-487 (OPUC 2008) (stating that ratemaking is a legislative act and, like legislation, is prospective in nature absent explicit legislative direction); *People's Org. for Wash. Energy Resources v. Wash. Utils. & Transp. Comm'n*, 104 Wash.2d 798, 807 (Wash.1985) (ratemaking is legislative in character); *Sorensen v. Western Hotels, Inc.* 55 Wash.2d 625, 629 (Wash. 1960) (legislative acts will generally be given prospective, and not retroactive, effect).

<sup>42</sup> ICNU's Phase II Opening Brief ¶ 10.

**2. PacifiCorp Did Not Provide Misleading or Inaccurate REC Information.**

24. Public Counsel and ICNU claim that an exception to the rule against retroactive ratemaking is appropriate in this case because PacifiCorp provided misleading REC information.<sup>43</sup> Their claim fails on a number of levels. Most basically, there is no evidentiary support in this or any other case that PacifiCorp has misled parties on REC information.
25. In their zeal to retroactively recover PacifiCorp's REC revenues (despite having not filed for deferred accounting), it is Public Counsel and ICNU that have engaged in questionable and misleading tactics. Public Counsel and ICNU have repeatedly denied knowledge of PacifiCorp's California REC revenues until July 2010.<sup>44</sup> The record in this case now irrefutably demonstrates that Mr. Schoenbeck filed testimony for ICNU in January 2010 addressing PacifiCorp's REC contract with Southern California Edison (SCE), claiming its terms were comparable to Puget's California REC contracts. This testimony was filed in the Puget REC docket to which Staff and Public Counsel were both parties,<sup>45</sup> but none of the Responding Parties previously disclosed this filing in this case or in the ICNU/Public Counsel complaint case.<sup>46</sup>
26. In addition, while ICNU and Public Counsel cite the order dismissing their complaint as support, the only finding in that order relating to misleading behavior went against ICNU and Public Counsel, not PacifiCorp. The Administrative Law Judge (ALJ) found that ICNU/Public Counsel's argument on the accrual of their claim was "misleading," because they relied upon a case that the Commission had reversed without acknowledging that fact. At the same time, the ALJ examined the allegations related to PacifiCorp's REC discovery responses and found that "PacifiCorp provided full responses to ICNU's data requests, as formulated, during the period

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<sup>43</sup> Public Counsel's Phase II Opening Brief ¶¶ 18-36; ICNU's Phase II Opening Brief ¶¶ 19-21.

<sup>44</sup> Exh. No. DWS-13 ¶ 7 n.5.

<sup>45</sup> *Re. Amended Petition of Puget Sound Energy, Inc. for an Order Authorizing the Use of the Proceeds from the Sale of Renewable Energy Credits and Carbon Financial Instruments*, Docket No. UE-070725.

<sup>46</sup> See Exh. No. KHB-13; Exh. No. DWS-13; Exh. No. DWS-16.

when discovery continued.”<sup>47</sup> The only reservation the ALJ expressed with respect to PacifiCorp’s responses was that it was a “matter of some concern that the Company did not disclose any information about the California contracts when the regulatory contingency was removed from them and they became fully effective.”<sup>48</sup> But, as just noted, the ALJ was not informed that ICNU had actually filed testimony on one of PacifiCorp’s California REC contracts in the Puget REC case in January 2010 (just shortly after the regulatory contingency was removed), showing that Public Counsel and ICNU were well aware of the existence of these contracts.

27. Public Counsel also incorrectly claims that the Company withheld REC information in this case.<sup>49</sup> Although Public Counsel devotes two pages of its brief to this claim, the claim boils down to the fact that the Company supplemented a response to Public Counsel Data Request 189 to provide additional REC contracts effective beginning in 2011. These contracts are irrelevant to evaluating 2009 and 2010 RECs in this stage of the proceeding and no party has alleged otherwise. Indeed, the fact that the Company supplemented a prior data request response to provide additional REC data to the parties demonstrates the Company’s continuing effort to be forthcoming on this issue, not the opposite.

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<sup>47</sup> *Wash. State Attorney Gen.’s Office and the Indus. Cust. of NW Util. v. PacifiCorp*, Docket No. UE-110070, Order 1, Administrative Law Judge’s Initial Order Dismissing Complaint ¶ 54 (Apr. 27, 2011). On May 26, 2011, the Commission issued a Notice of Finality with respect to the Initial Order Dismissing Complaint. The Notice of Finality stated that no party petitioned for administrative review of the initial order and the Commission did not give notice of its intention to review the order on its own motion, so the order became final on May 25, 2011 by operation of law. The Notice of Finality also stated that the Commission does not endorse the order’s reasoning and conclusions, and if cited in the future, the order must be identified as an ALJ’s order.

<sup>48</sup> Initial Order ¶ 55 (“Although it appears PacifiCorp adhered to the letter of the Commission’s procedural rules governing discovery, it nevertheless is a matter of some concern that the Company did not disclose any information about the California contracts when the regulatory contingency was removed from them and they became fully effective. It would be no more than pure speculation at this point to consider what impact, if any, such disclosure might have had on the Settlement or the Commission’s consideration of it. PacifiCorp knew, however, that this was an issue of some significance to at least some parties, and should have known it is a matter of significance to the Commission. The Commission must rely to some degree on the good faith effort of the companies it regulates to be forthcoming with information even when not legally compelled to do so. That effort appears to have been lacking in this instance, a shortcoming the Commission would expect to see corrected if similar circumstances arise again.”).

<sup>49</sup> Public Counsel’s Phase II Opening Brief ¶¶ 26-32.

28. Public Counsel also references proceedings in Utah and Oregon in which parties “raised concerns regarding potential concealment of REC sales information by PacifiCorp.”<sup>50</sup> These are irresponsible allegations because, as Public Counsel well knows, no commission has ever found that PacifiCorp withheld or concealed REC information. In any event, Public Counsel’s reference to an unsubstantiated claim by a party in Utah and an application for deferred accounting by ICNU in Oregon that did not even allege that the Company withheld REC information cannot serve as a basis for establishing an exception to the rule against retroactive ratemaking.

29. Public Counsel and ICNU cite to *Salt Lake Citizen’s Congress v. Mountain States Telephone & Telegraph Company*<sup>51</sup> for precedent that an exception to the rule against retroactive ratemaking is appropriate in the case of utility misconduct.<sup>52</sup> But the key facts of that case—a utility violating a commission order, failing to disclose information on questioning by the commission and earning an unusually high rate of return—have no parallels in this case.

30. Finally, if the basis of Public Counsel’s and ICNU’s proposed exception to the rule against retroactive ratemaking is that PacifiCorp provided misleading discovery responses in the 2009 GRC, there is no basis for including REC revenues from the 2008 GRC in rates. Public Counsel and ICNU have not claimed in this or any other proceeding that PacifiCorp withheld information on REC revenues during the 2008 GRC. Therefore, even under Public Counsel’s and ICNU’s proposed exception, there is no foundation to include 2009 REC revenues in rates.

### 3. PacifiCorp’s REC Forecasts Were Reasonable at the Time They Were Made.

31. ICNU also claims the Commission should establish an exception to the rule against retroactive ratemaking on the basis that PacifiCorp provided inaccurate REC revenue forecasts in

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<sup>50</sup> *Id.* ¶ 33.

<sup>51</sup> 846 P.2d 1245, 49 (Utah 1993).

<sup>52</sup> Public Counsel’s Phase II Opening Brief ¶¶ 19-22; ICNU’s Phase II Opening Brief ¶¶ 19-20.

the 2009 and 2010 GRCs.<sup>53</sup> An exception to the rule against retroactive ratemaking based upon an inaccurate utility forecast of costs or revenues would eviscerate the rule.<sup>54</sup> ICNU attempts to justify this exception based on the unsubstantiated claim that the Company “knowingly” provided inaccurate forecasts.<sup>55</sup>

32. With respect to 2009 REC revenues included in the 2008 GRC, there is no evidence, and indeed not even any allegation, supporting a finding that the Company knowingly provided an inaccurate REC revenue forecast in that case. The ICNU/Public Counsel complaint related to REC revenues that were included in the 2009 GRC, not the 2008 GRC, so even the unsupported claims in that proceeding cannot be used to establish that the Company knowingly provided an inaccurate forecast in the 2008 GRC. Moreover, no party ever challenged the forecast of REC revenues in that case. Although ICNU and Public Counsel claim that ICNU and Staff previously objected to the Company’s REC revenue forecast, they cite to testimony in this proceeding.<sup>56</sup> It is uncontested that no party objected to the REC revenue forecast in the 2008 GRC.

33. With respect to 2010 REC revenues included in the 2009 GRC, ICNU provides no support for its claim that the Company was “well aware” that it would experience extraordinary REC revenues in 2009.<sup>57</sup> In fact, in the complaint proceeding, the ALJ found that the REC contracts that drove the increase in REC revenues in 2010 would not have been considered “known and measurable” until the regulatory contingency was removed—in September and

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<sup>53</sup> ICNU’s Phase II Opening Brief ¶ 21.

<sup>54</sup> See *MCI Telecomm. Corp. v. Pub. Serv. Comm’n of Utah*, 840 P.2d 765, 770 (Utah 1992) (stating that “[t]he bar on retroactive ratemaking makes no exception for missteps in the rate-making process,’ even though the projections of expenses and revenues for the test year will necessarily vary from actual experience.” (quoting *Utah Dep’t of Bus. Reg. v. Pub. Serv. Comm’n*, 720 P.2d 420 (Utah 1986))).

<sup>55</sup> ICNU’s Phase II Opening Brief ¶ 13.

<sup>56</sup> Public Counsel’s Phase II Opening Brief ¶ 67; ICNU’s Phase II Opening Brief ¶ 29.

<sup>57</sup> ICNU’s Phase II Opening Brief ¶ 5.

October, 2009, after the settlement in the 2009 GRC.<sup>58</sup> As was the case in the 2008 GRC, no party objected to the 2010 REC revenue forecast included in the 2009 GRC.

34. With respect to 2011-2012 REC revenues included in this case, the Company's initial forecast of REC revenues was based on reasonable assumptions, and was updated when those assumptions changed. At the time of the Company's initial filing, its actual practice was to bank all Washington-allocated RECs.<sup>59</sup> The Company modified its position on rebuttal to reflect the fact that Washington's RPS would not be amended to allow longer-term banking.<sup>60</sup> ICNU claims that the Company should have reflected REC revenues in its initial case because the legislative session ended three weeks before the Company's initial filing in this case.<sup>61</sup> ICNU's criticism is unwarranted because it is unreasonable to have expected the Company to incorporate this change in the case given the rapidity of changes in the area of RECs and the lead time required to prepare a general rate case.

35. Finally, the Responding Parties all propose basing the bill credit on actual revenues rather than forecasts because of the unpredictable nature of REC revenues.<sup>62</sup> It is unreasonable for the Responding Parties to rely on the unpredictable and quickly changing nature of the REC market to support their proposed bill credit structure but ignore these factors when assessing the accuracies of the Company's past REC revenue forecasts.

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<sup>58</sup> Initial Order at ¶ 53-54.

<sup>59</sup> Duvall, TR. 298:15-23.

<sup>60</sup> Duvall, Exh. No. GND-5T 3:10-19.

<sup>61</sup> ICNU's Phase II Opening Brief.

<sup>62</sup> Staff's Phase II Opening Brief ¶ 57; Public Counsel's Phase II Opening Brief ¶ 66; ICNU's Phase II Opening Brief ¶ 39.



**4. An Exception to the Rule against Retroactive Ratemaking for Extraordinary and Unforeseeable Costs or Revenues is Not Justified in this Case and is Contrary to Commission Precedent.**

36. Public Counsel also proposes that the Commission establish an exception to the rule against retroactive ratemaking for “extraordinary and unforeseeable losses or gains.”<sup>63</sup> Although Public Counsel claims that the Commission has applied this exception previously, it has not done so absent a deferred accounting petition. Public Counsel cites to a 1988 order in which the Commission noted that “it has on rare occasions authorized the recovery of past expenses in instances where doing so is consistent with the public interest and sound regulatory policy.”<sup>64</sup> However, in that case the Commission was evaluating an energy cost adjustment clause. The Commission noted that the adjustment clause would not constitute retroactive ratemaking because it would be based on a “fixed mathematical formula” and would be applied only after notice and hearing.<sup>65</sup> In this case, parties are proposing a retroactive true up of REC revenues, not a forward-looking true up that the Commission has found is not retroactive ratemaking.

37. Commission precedent shows that it has previously rejected the arguments that form the basis of the exception sought by Public Counsel in this case. In 2002, the Company filed a request for deferral of excess power costs related to the energy crisis.<sup>66</sup> The Commission rejected PacifiCorp’s request.<sup>67</sup> If the Commission found that the energy crisis was not extraordinary and unforeseen enough to justify an exception to retroactive ratemaking, PacifiCorp’s higher-than-expected REC revenues in 2009 and 2010 certainly cannot justify such an exception.

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<sup>63</sup> Public Counsel’s Phase II Opening Brief ¶ 37.

<sup>64</sup> *Wash. Utils. & Transp. Comm’n v. Puget Sound Power & Light Co.*, Docket U-81-41, 6<sup>th</sup> Supp. Order (Dec. 19, 1988).

<sup>65</sup> *Id.*

<sup>66</sup> *Re Petition of PacifiCorp for an Accounting Order Authorizing Deferral of Excess Net Power Costs*, Docket No. UE-020417, 6<sup>th</sup> Supp. Order ¶ 53 (July 15, 2003).

<sup>67</sup> *Id.*

38. Moreover, Public Counsel itself claims that for this exception to apply, the item must be “non-recurring.”<sup>68</sup> There is no question that REC revenues are recurring—this is why the parties are debating REC revenues for 2009, 2010, and 2011. The revenues at issue were not unexpected one-time events, but rather the result of an inaccurate forecast of recurring revenues.<sup>69</sup> Therefore, even under Public Counsel’s characterization of the exception for unforeseen and exceptional cost items, it would not apply to the REC revenues at issue in this case.

39. Even if the Commission established an exception for extraordinary and unforeseeable cost items and found that such an exception is relevant to this case, the fact that the Company was under earning in 2009 and 2010 should negate application of the exception. Public Counsel cites to *MCI Telecommunications Corporation v. Public Service Commission of Utah* (“MCI”)<sup>70</sup> for support of its argument that unforeseeable revenues can be retroactively included in rates. In that case, the Utah Supreme Court evaluated whether an exception to the rule against retroactive ratemaking was applicable when a change in the tax law reduced U.S. West’s income tax rate by 26 percent below what was included in rates.<sup>71</sup> The court reviewed cases recognizing an exception to the rule against retroactive ratemaking when an unforeseeable and extraordinary increase in utility expenses resulted from a natural disaster.<sup>72</sup> The court noted that this exception was justified because, absent such an exception, a utility would not be afforded a reasonable opportunity to earn a reasonable rate of return.<sup>73</sup> Based on this justification, it is clear the exception for an unforeseeable and extraordinary event that caused a decrease in earnings would

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<sup>68</sup> Public Counsel’s Phase II Opening Brief ¶ 38.

<sup>69</sup> See *Turpin v. Okla. Corp. Comm’n*, 769 P.2d 1309, 1332 (Okla. 1988) (distinguishing between errors in ratemaking and unexpected windfalls).

<sup>70</sup> 840 P.2d 765 (Utah 1992).

<sup>71</sup> *Id.* at 767.

<sup>72</sup> *Id.* at 771.

<sup>73</sup> *Id.*

only be justified if the utility was earning less than its authorized return as a result.

Correspondingly, an exception for an unforeseeable and extraordinary event that caused an increase in earnings would only be justified if the utility was earning more than its authorized return as a result.

40. This rationale is confirmed by the court’s holding and direction on remand in *MCI*. After holding that an exception to the rule against retroactive ratemaking for unforeseeable and *extraordinary* increases or decreases in expenses is recognized in Utah,<sup>74</sup> the court directed the Commission on remand to make factual findings that, “at a minimum, include (1) U.S. West’s earnings and rate of return for the years 1986, 1987, 1988, and 1989 . . . ; (2) the extent to which U.S. West’s earnings exceeded the authorized rate of return in 1987, 1988, and 1989 . . . .”<sup>75</sup> The court went on to state:

*[I]f a utility earns profits in excess of its authorized rate of return because of an exception to the rule against retroactive ratemaking, the authorized return is the best available measure of a fair return and earnings in excess of that rate are subject to refund. Accordingly, if on remand the Tax Reform Act of 1986 is found to have resulted in an unforeseeable and extraordinary decrease in expenses . . . , we hold that U.S. West’s earnings, to the extent they exceeded its authorized rate of return established in the 1985 general rate case, should be refunded to U.S. West ratepayers.*<sup>76</sup>

41. The court clearly and explicitly recognized that application of exceptions to the rule against retroactive ratemaking is contingent on the level of utility earnings. In this case, there is no factual dispute that the Company was under earning in 2009 and 2010. As a result, even under Public Counsel’s justification for the exception for unforeseeable and significant revenues, there is no basis to include the past REC revenues in rates.

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<sup>74</sup> *Id.* at 772.

<sup>75</sup> *Id.* at 774.

<sup>76</sup> *Id.* at 776 (emphasis added).

**5. The Responding Parties Cannot Rely on Deferred Accounting to Justify their Proposals.**

42. The Commission has previously recognized that deferred accounting can be used to track costs during one period with the possibility for inclusion in rates in a future period.<sup>77</sup> Staff and ICNU cite to the Commission's use of deferred accounting as a basis for allowing the 2009 and 2010 REC revenues into rates in this case.<sup>78</sup> The key difference between the examples of deferred accounting cited by Staff and ICNU and this case is that the Commission has not previously allowed for deferred accounting absent notice of a deferred accounting request, and in fact has emphasized the importance of notice.<sup>79</sup>

43. ICNU claims that notice is not required for deferred accounting requested by non-utility parties.<sup>80</sup> Although ICNU cites a Commission order purportedly in support of this proposition, the order referenced by ICNU does not stand for that proposition, nor does any other Commission order. The Commission should not adopt ICNU's proposal, as it would effectively eliminate the rule against retroactive ratemaking as applied to revenues, but maintain it as applied to costs. Such a result is at odds with the Commission's mission to regulate with "certainty, consistency, and fairness to both utility companies and their customers."<sup>81</sup> Allowing for unnoticed deferred accounting of revenues but not costs would also be at odds with *Duquesne v. Barach*, because it would require the utility to bear the risk of increased costs, but would result in the utility returning increased revenues to customers.<sup>82</sup>

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<sup>77</sup> *Re Petition of PacifiCorp for an Accounting Order Authorizing Deferral of Excess Net Power Costs*, Docket No. UE-020417, 3<sup>rd</sup> Supp. Order ¶ 24 (Sept. 27, 2002).

<sup>78</sup> Staff's Phase II Opening Brief ¶ 14; ICNU's Phase II Opening Brief ¶ 12.

<sup>79</sup> *Re Petition of PacifiCorp for an Accounting Order Authorizing Deferral of Excess Net Power Costs*, Docket No. UE-020417, 3<sup>rd</sup> Supp. Order ¶ 24 (Sept. 27, 2002).

<sup>80</sup> ICNU's Phase II Opening Brief at ¶ 12.

<sup>81</sup> *Wash. Utils. & Transp. Comm'n v. Verizon NW, Inc.*, Docket No. UT-040788 Order 11 ¶ 140 (Oct. 15, 2004).

<sup>82</sup> *See Duquesne v. Barasch*, 488 US 299, 314 (1989).

44. ICNU's claim is also at odds with ICNU's representation in the 2009 GRC stipulation that set forth a baseline to be used if a party files an application for deferral. If ICNU understood at the time of the 2009 GRC stipulation that a request for deferred accounting was not necessary for parties to request retroactive recovery of 2010 REC revenues, there would have been no need to call the issue out in the stipulation. Indeed, this is the first time ICNU has made the argument that a non-utility party is not required to provide notice of a request for deferred accounting.

45. Public Counsel also claims that the parties were not privy to information that would form the basis of a deferred accounting request.<sup>83</sup> Public Counsel continues to claim that "it was not until July 28, 2010, that the REC reports showed the jump in revenues that occurred in October 2009."<sup>84</sup> As addressed above, all of the Responding Parties were aware of PacifiCorp's REC sale to SCE by January 2010 when ICNU provided testimony on it in the Puget REC proceeding.

46. In addition, as Public Counsel itself points out, parties (including ICNU) filed for deferred accounting of REC revenues in Oregon and Utah.<sup>85</sup> If those parties were aware of the need to file for deferred accounting of REC revenues, there is no reason why the parties in this case should not have been aware, especially given their recognition in the 2009 GRC stipulation that such a request could occur in the future.

47. With respect to the 2009 GRC stipulation, Staff claims that Staff is "implementing" the stipulation by proposing retroactive recovery of 2010 RECs.<sup>86</sup> But Staff still has not explained why the stipulation includes specific reference to deferred accounting and a REC revenue baseline if a request for deferred accounting was not required for retroactive recovery of REC revenues. Although the language stated that parties could "request that the Commission take any

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<sup>83</sup> Public Counsel's Phase II Opening Brief ¶12.

<sup>84</sup> *Id.* ¶ 43.

<sup>85</sup> *Id.* ¶¶ 33, 35.

<sup>86</sup> Staff's Phase II Opening Brief ¶ 44.

other action regarding PacifiCorp's Washington-allocated RECs," the specific reference to deferred accounting indicates that the parties understood that such a request would be required. Staff's disavowal of the import of the reference to deferred accounting in the stipulation is disingenuous.

48. Finally, the Commission has explicitly held that it cannot "reach back in time to alter the tariffed rate under which [the utility] operated by recognizing a deferral that was neither authorized nor recorded."<sup>87</sup> The Commission found that doing so would be retroactive ratemaking and illegal. The Responding Parties are asking the Commission to recognize a deferral that was neither authorized nor recorded in this case, and the Commission should similarly reject their proposals as illegal retroactive ratemaking.

**6. The Other Orders Cited by Staff Do Not Support the Argument that Retroactive Recovery of REC Revenues is Appropriate.**

49. Staff cites to a number of other orders to support the argument that retroactive recovery of RECs is appropriate, none of which stand for the proposition that allowing three years of revenues in a single rate effective period is appropriate absent a request for deferred accounting.

50. Staff first cites to power cost adjustment (PCA) tariffs.<sup>88</sup> These mechanisms have two crucial elements that are absent from Staff's, Public Counsel's, and ICNU's proposals in this case: they are implemented on a going-forward basis and they are symmetrical.<sup>89</sup> PCAs operate like the Commission's going-forward REC revenue true up and adjustment ordered by the Commission for REC revenues beginning on the rate effective date in this case. PacifiCorp has

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<sup>87</sup> *Wash. Utils. & Transp. Comm'n v. Olympic Pipe Line Co.*, Docket TO-011472, 20<sup>th</sup> Supp. Order ¶ 119 (Sept. 27, 2002).

<sup>88</sup> Staff's Phase II Opening Brief ¶ 13.

<sup>89</sup> *See Wash. Utils. & Transp. Comm'n v. Puget Sound Power & Light Co.*, Docket U-81-41, 6<sup>th</sup> Supp. Order (Dec. 19, 1988) (giving notice that the Commission would consider changes to the ECAC and explaining that actual power costs are trued up against a baseline).

not challenged the legality of a going-forward true up of REC revenues—PacifiCorp is objecting to the retroactive recovery of 2009 and 2010 REC revenues.

51. Similarly, Staff claims that the fact that Schedule 96 and Schedule 191 include surcharges for specific costs justifies Staff's approach on REC revenues.<sup>90</sup> These surcharges, however, operate on a forward-looking basis and did not provide for an inclusion of three years of costs into rates during one rate effective period.

52. Staff cites to the Commission's use of deferred accounting as justification for including REC revenues from prior periods in rates.<sup>91</sup> The Company explained in its Initial Filing why the Responding Parties' proposals cannot be construed as deferred accounting and Staff's citations to deferred accounting are therefore irrelevant.

53. Staff also cites to using amortization of costs incurred only in the test period.<sup>92</sup> The example Staff cites is from a Puget case allowing amortization of abandoned plant costs.<sup>93</sup> This order addressed how the utility could recover costs associated with an abandoned plant.<sup>94</sup> The question in that Puget case was whether plant costs could be recovered if the plant was abandoned, not whether an expense from a past period could be included in rates. Amortization of capital items, which is a standard ratemaking element that does not implicate retroactive ratemaking, is not analogous to retroactive recovery of revenues.

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<sup>90</sup> Staff's Phase II Opening Brief ¶ 27.

<sup>91</sup> *Id.* ¶ 14.

<sup>92</sup> Staff's Phase II Opening Brief ¶ 15.

<sup>93</sup> *Wash. Utils. & Transp. Comm'n v. Puget Sound Power & Light Co.*, Cause U-82-38, 3<sup>rd</sup> Supp. Order (July 22, 1983).

<sup>94</sup> *Id.* at 17-21.

54. Staff also cites to the amortization of Y2K costs in Avista's 1999 rate case.<sup>95</sup> That case is not analogous to this case because it apparently involved one-time costs for Y2K preparation, not recurring costs or revenues that are forecast in each rate case, as is the case for REC revenues.

55. Staff cites to the amortization of the Company's pension gain.<sup>96</sup> That pension gain was the subject of an accounting petition, and therefore not comparable to the proposal for retroactive recovery without notice.

56. Finally, Staff cites to "other practices" by other states to include in rates previously-incurred costs and revenues.<sup>97</sup> There are just as many examples, however, of states rejecting retroactive treatment of costs and revenues.<sup>98</sup> The decision of other states to allow exceptions to the rule against retroactive ratemaking is irrelevant to the Commission's determination of whether the proposed rate treatment in this case is in accordance with Washington law, policy, and Commission precedent.

**C. The Parties' Disregard of the Impact of their Proposals on the Company's Financial Condition is Inconsistent with Washington Law.**

57. Staff and Public Counsel recommend that the Commission ignore evidence showing that the Company significantly under earned in 2009 and 2010, and ICNU does not address the evidence on the Company's earnings at all.<sup>99</sup> The Responding Parties' arguments are inconsistent with the requirement that the Commission evaluate rates to determine whether they

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<sup>95</sup> Staff's Phase II Opening Brief ¶ 18.

<sup>96</sup> *Id.* ¶ 19.

<sup>97</sup> *Id.* ¶ 20.

<sup>98</sup> See, e.g., *Matanuska Elec. Ass'n v. Chugach Elec. Ass'n*, 53 P.3d 578, 587 (Alaska 2002) (finding that a refund of amounts collected in excess of line loss factor would violate the rule against retroactive ratemaking); *re. Elizabethtown Water Co v. New Jersey Bd. of Pub. Util.*, 527 A.2d 354 (N.J., 1987) (overruling the commission's order postponing the water company's rate effective date in order to offset the water company's unusual gains resulting from high water prices during a drought because "[t]he orderly processes of ratemaking are necessarily present and prospective if ratemaking is to be effective." (citations omitted)); *SC Elec. and Gas Co. v. Pub. Serv. Comm'n*, 272 S.E.2d 793, 795 (S.C., 1980) (reversing the Commission's decision to provide a refund for the sale and purchase of energy between the utility and other parties because "the crux of this issue is the firm principle that rate-making is prospective rather than retroactive.").

<sup>99</sup> See Staff's Phase II Opening Brief ¶¶ 23, 34; Public Counsel's Phase II Opening Brief ¶¶ 48-52.



are just and reasonable, and to set rates that allow the utility an opportunity to earn its authorized rate of return.

58. Staff argues that it is “too late” for the Company to argue for an earnings test.<sup>100</sup> The Commission has a constitutional and a statutory duty to determine whether the rates it orders are just and reasonable.<sup>101</sup> Determining whether rates provide the utility to earn a reasonable rate of return is fundamental to determining whether rates are just and reasonable.<sup>102</sup> The Commission should not adopt Staff’s proposal that the Commission violate this constitutional and statutory duty.
59. Additionally, the Commission has previously found that testimony on earnings is relevant even when the scope of the hearing was specifically limited and was not to address ratemaking issues.<sup>103</sup> In that case, after determining that the scope of the hearing was limited and would not address ratemaking issues, the Commission still found that “earnings testimony may only be used to examine whether access charges are fair, just and reasonable.”<sup>104</sup> This finding indicates that the Commission will evaluate earnings to determine the just and reasonableness of rates in this case.
60. Staff also argues that it is “not the Commission’s problem” if PacifiCorp must restate its earnings if the Commission uses a start date prior to the beginning of the rate year.<sup>105</sup> Staff misses the point of the Company’s concerns related to earnings, which is that adoption of the

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<sup>100</sup> Staff’s Phase II Opening Brief ¶¶ 23.

<sup>101</sup> *Fed. Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 601-603 (1944); RCW 80.28.020.

<sup>102</sup> *Id.* at 603; *Wash. Utils. & Transp. Comm’n v. Wash. Natural Gas Co.*, Cause No. U-77-47 (Nov. 22, 1977).

<sup>103</sup> *AT&T Comm. of the Pac. NW, Inc. v. Verizon NW, Inc.*, Docket No. UT-020406, 7th Supp. Order ¶ 62 (Apr. 8, 2003).

<sup>104</sup> *Id.*

<sup>105</sup> Staff’s Phase II Opening Brief ¶ 34.

Responding Parties' proposals will deny the Company the ability to earn its authorized rate of return in the rate effective period of this rate case.<sup>106</sup>

61. In any event, Staff's cavalier perspective on the impact of its proposal on Company's earnings is troubling. Staff's proposed retroactive recovery of two years of REC revenues on top of the REC revenues already included in rates in the rate effective period is unprecedented. The Commission has a responsibility to take into account the impact of such a proposal on the financial well-being of the utility. Staff's argument to the contrary demonstrates a disregard for the Commission's need to adhere to Washington and constitutional law and to balance the needs of customers and the utility in making its determination in this case.

62. Public Counsel similarly argues that whether the Company earned its authorized return on equity in 2009 and 2010 is irrelevant to the question of whether the Commission can order a rate credit for REC revenues received during those years.<sup>107</sup> Public Counsel cites to a Utah Public Service Commission (Utah Commission) order rejecting PacifiCorp's motion to dismiss an application for deferred accounting of REC revenues filed by industrial customers.<sup>108</sup> However, the Utah Commission found in that order only that the proponents presented factual and policy issues that warranted further examination, including the factual question of the Company's earnings in 2009 and whether case law foreclosed the retroactive return of revenues for years the utility was under earning.<sup>109</sup> The Utah Commission did not rule on this issue and that case was resolved via settlement.<sup>110</sup>

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<sup>106</sup> Dalley, Exh. No. RBD-28CT 3:14-21.

<sup>107</sup> Public Counsel's Phase II Opening Brief ¶ 49.

<sup>108</sup> *Id.* ¶ 50.

<sup>109</sup> *Re Application of the Utah Indus. Energy Consumers for a Deferred Accounting Order Directing Rocky Mountain Power to Defer Incremental REC Revenue for Later Ratemaking Treatment*, Docket 11-035-46, Order Denying Motion to Dismiss at 8 (June 20, 2011).

<sup>110</sup> *Re Application of the Utah Indus. Energy Consumers for a Deferred Accounting Order Directing Rocky Mountain*

63. Public Counsel also claims that the Company’s earnings in 2009 and 2010 were “quite robust.”<sup>111</sup> This claim is misleading and demonstrably wrong. The data requests cited by Public Counsel show that the Company under earned on a total-company basis in these years.<sup>112</sup> In addition, Public Counsel’s claim that the Company issued dividends in these years fails to explain that the Company issued dividends only to preferred stock holders and did not issue dividends to common stock holders.<sup>113</sup> The holdings of preferred stock holders represent only 0.3 percent of the Company’s authorized capital structure in Washington.<sup>114</sup>

**D. Staff Mischaracterizes the Company’s Testimony on the Regulatory Environment in Washington.**

64. Staff’s discussion of PacifiCorp’s testimony on the regulatory environment in Washington is a mischaracterization. The Company did not “attack” the Commission or its policies as Staff claims. The Company described the “unique set of challenges” related to the Company’s opportunity to recover its costs and earn its authorized rate of return in Washington.<sup>115</sup> Staff’s recommendation that the Commission ignore the overall impact of Washington ratemaking policies on the utility’s opportunity to earn its rate of return is contrary to the Commission’s charge to regulate in the public interest.

65. Staff claims that the other two investor-owned utilities in Washington are able to operate successfully under the same policies.<sup>116</sup> Notably, this statement was not supported by any evidence or citation. The level of rate case activity over the past several years by Washington’s investor-owned utilities undermines Staff’s unsubstantiated assertion.

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*Power to Defer Incremental REC Revenue for Later Ratemaking Treatment*, Docket 11-035-46, Report and Order at 30-32 (Sept. 13, 2011).

<sup>111</sup> Public Counsel’s Phase II Opening Brief ¶ 51.

<sup>112</sup> Exh. No. ALK-5.

<sup>113</sup> Exh. No. ALK-4.

<sup>114</sup> *Wash. Utils. & Transp. Comm’n v. PacifiCorp*, Docket No. UE-100749, Order 06 at Table 1 (Mar. 25, 2011).

<sup>115</sup> Kelly, Exh. No. ALK-2CT 12-13.

<sup>116</sup> Staff’s Phase II Opening Brief ¶ 31.

### **E. Calculation of 2009 and 2010 REC Revenues**

66. Staff, Public Counsel, and ICNU propose imputing REC revenues that were not allocated to Washington in 2009 and 2010.<sup>117</sup> There is no question that the revenues that Staff, Public Counsel, and ICNU are imputing were not allocated to Washington in those years. The question is whether the Commission should retroactively change the allocation of REC revenues, even when the parties had all the information available to them in 2009 and 2010 to propose changing the allocation on a prospective basis. Staff continues to claim that Staff “discovered” the need to impute additional RECs during the course of this proceeding,<sup>118</sup> but as the Company has explained, Staff has known this information for almost three years.<sup>119</sup> Moreover, the REC revenues included in rates for 2009 and 2010 and the baseline in the 2009 GRC stipulation were based on the allocation method used in the Company’s filing. Imputing additional revenue on a retroactive basis adds to the unfairness of the Responding Parties’ proposals.
67. ICNU claims that the Company agrees with “ICNU, Staff and Public Counsel’s approach, but only on a going forward basis.”<sup>120</sup> It was the Company, however, who proposed the methodology now adopted by the Responding Parties. The Company appropriately applied the new approach on a prospective basis only.
68. In addition, Staff’s proposed change to the allocation of 2009 and 2010 REC revenues is inconsistent with Staff’s claim that some of the Company’s arguments are “too late” based on the Commission’s order.<sup>121</sup> Staff’s position that the Company cannot at this point argue in favor of an earnings review and to evaluate the one-sided nature of the other parties proposals is

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<sup>117</sup> Staff’s Phase II Opening Brief ¶ 46; Public Counsel’s Phase II Opening Brief ¶ 55; ICNU’s Phase II Opening Brief ¶ 22.

<sup>118</sup> Staff’s Phase II Opening Brief ¶ 8.

<sup>119</sup> Dalley, Exh. No. RBD-28CT 11:3-14.

<sup>120</sup> ICNU’s Phase II Opening Brief ¶ 27.

<sup>121</sup> Staff’s Phase II Opening Brief ¶¶ 23, 25.

inconsistent with Staff's attempt to reallocate and impute additional revenues in 2009 and 2010. The Commission's order is clear that this phase of the proceeding is to assess REC proceeds actually received by the Company, not imputed revenues.<sup>122</sup>

69. Staff, Public Counsel, and ICNU argue that 2009 REC revenues<sup>123</sup> should not be offset by the amount of REC revenues included in the Company's 2008 GRC.<sup>124</sup> They argue that the 2008 GRC stipulation did not include a baseline for REC revenues, so 2009 REC revenues should not be offset. The Responding Parties' proposal to exclude the \$576,254 of REC revenues that were included in the Company's 2008 GRC filing emphasizes the unreasonableness of their overall proposals. The Responding Parties did not include a baseline for REC revenues in the 2008 GRC stipulation because they had not contemplated the potential for filing a deferred accounting application for 2009 REC revenues as they did in the case of 2010 REC revenues. On one hand, the Responding Parties are arguing that the Company should get no credit for 2008 REC revenues included in rates because they did not contemplate filing a deferred accounting application in the 2008 GRC stipulation, and on the other, they are arguing that even though the parties contemplated filing a deferred accounting application in the 2009 GRC stipulation, they do not need to file one to have those REC revenues be included in rates.

70. Moreover, as the Company explained in its Initial Post-Hearing Brief, under Commission precedent, the remedy for not having a baseline against which to measure the amounts deferred is to reject the deferral, not to assume a baseline of zero.<sup>125</sup> The fact that the parties are arguing

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<sup>122</sup> Order 06 ¶¶ 203, 205, 207.

<sup>123</sup> Staff now refers to the revenues included in the 2008 GRC as "2008 REC revenues," even though Staff's witness repeatedly refers to these revenues as 2009 revenues. *See, e.g.*, Breda, Exh. No. KHB-6:21. This redesignation of 2009 REC revenues as 2008 REC revenues in Staff's brief appears to be Staff's attempt to support Staff's argument that 2009 REC revenues were not previously included in rate, despite all factual evidence to the contrary.

<sup>124</sup> Staff's Phase II Opening Brief 4; Public Counsel's Phase II Opening Brief ¶ 58; ICNU's Phase II Opening Brief ¶ 34.

<sup>125</sup> *Re. Petition of PacifiCorp for an Accounting Order Authorizing Deferral of Excess Net Power Costs*, Docket No. UE-020417, 6<sup>th</sup> Supp. Order ¶ 32 (July 15, 2003).

about the baseline for 2009 REC revenues shows that the Commission's previously expressed concerns on this issue are implicated here. The absence of a 2009 REC baseline means that 2009 REC revenues cannot be measured accurately and including them in rates is inappropriate.

71. The Commission should reject ICNU/PC's calculation of REC revenues that assumes the Company can sell 100 percent of RECs. Public Counsel claims that it would be "the prudent course of action for PacifiCorp to sell 100 percent of RECs."<sup>126</sup> Public Counsel ignores the fact that the Company has not sold 100 percent of its RECs and cannot do so. Neither Public Counsel nor ICNU allege that the Company has been imprudent with respect to the proportion of its RECs it has been able to market. There is therefore no reasonable basis for imputing REC revenues above the percentage the Company has actually been able to sell. ICNU's suggestion that ICNU's approach is appropriate because it focuses on "when a REC was generated"<sup>127</sup> is nonsensical. Just because a REC was generated does not mean it is marketable. Staff agrees that basing REC revenues on the actual proportion of RECs sold in the applicable period makes more sense because it reflects actual sales.<sup>128</sup> Furthermore, to the extent RECs can be sold in a year after the REC was generated, the proceeds of those sales will be reflected in the tracking mechanism during the annual true-up process.<sup>129</sup>

**F. Schedule 95 Should Change Based on the Forecast and True Up Each Year.**

72. The Commission should reject the parties' proposals to maintain the same level of bill credit regardless of the REC revenues incurred in each year.<sup>130</sup> Order 06 established a bill credit mechanism that would credit customers for REC revenues forecast in the rate effective period,

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<sup>126</sup> Public Counsel's Phase II Opening Brief ¶ 63.

<sup>127</sup> ICNU's Phase II Opening Brief ¶ 33.

<sup>128</sup> Staff's Phase II Opening Brief ¶ 55.

<sup>129</sup> See *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket No. UE-100749, PacifiCorp's Response to Commission Bench Request 6 (Nov. 14, 2011).

<sup>130</sup> See Staff's Phase II Opening Brief ¶ 57; Public Counsel's Phase II Opening Brief ¶ 66; ICNU's Phase II Opening Brief ¶ 38.

and true up the initial credits based on actual REC revenues received during the 12-month period.<sup>131</sup> Once again, Staff is picking and choosing which aspects of the Commission's Order 06 to which the parties can propose modifications. On one hand, Staff claims that the Company's objections to including 2009 and 2010 revenues in future rates is "too late," even when the Commission specifically left that issue for resolution in this phase of the docket. At the same time, Staff proposes changes to the credit mechanism that the Commission has already established. Responding Parties had the ability to seek reconsideration on the forecast and true-up nature of the REC balancing account in the first phase of this proceeding and failed to do so. In this phase, the Responding Parties have not provided any new evidence that warrants a change to Order 06 on this issue.

73. Aside from this contradiction, the Responding Parties' proposal should be rejected because it is prejudicial to the Company and will provide no benefit to customers. Requiring the Company to return REC revenues over a three to four year period when the Company must record the full amount of the adjustment in 2011 increases the financial burden of the already burdensome proposal.<sup>132</sup>

74. Public Counsel notes that its proposal is intended to avoid "the accumulation of a cash balance in an interest-bearing account that must ultimately be recovered from customers."<sup>133</sup> There is no evidence that the mechanism established in Order 06 and supported by the Company will result in the Company carrying a balance in an interest-bearing account that must be recovered from customers. On the other hand, the evidence shows that parties' proposal will certainly require the Company to accumulate a balance in an interest-bearing account for three to

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<sup>131</sup> Order 06 ¶ 204-205.

<sup>132</sup> Kelly, Exh. No. ALK-2CT 11:18-21; Dalley, Exh. No. RBD-28CT 3:3-13.

<sup>133</sup> Public Counsel's Phase II Opening Brief ¶ 66.

four years. It is unfair to place this burden on the Company with no evidence that there is a corresponding harm to customers that will be avoided by this treatment.

### III. CONCLUSION

75. No matter how hard the Responding Parties work to justify their retroactive REC tracker proposals, they cannot overcome the numerous legal and policy impediments raised. An order directing retroactive recovery of the Company's 2009 and 2010 REC revenues will upset numerous Commission policies and precedents, disincentivize utilities to pursue strategies beneficial to customers and the utility,<sup>134</sup> and eliminate any possibility that PacifiCorp will earn its allowed rate of return in the rate effective period.
76. PacifiCorp respectfully requests that the Commission instead decide to commence PacifiCorp's REC tracker on a prospective basis beginning April 2011. This outcome is consistent with the Commission's strong and stabilizing past adherence to the rule against retroactive ratemaking and related legal doctrines. It is also fair because PacifiCorp's actual 2009 and 2010 Washington REC revenues did nothing but slightly lessen PacifiCorp's under earning during the historic period.
77. If the Commission concludes that it may order recovery of historic REC revenues despite the precedents cited, the Company urges the Commission to exercise its discretion to mitigate the adverse financial impact on the Company by relying on PacifiCorp's approach to allocation of historic REC revenues, delaying the REC tracker commencement date until late 2010 (when the Puget REC case was finally resolved) and offsetting the historic REC revenues with historic increased hydro costs for the same period.

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<sup>134</sup> As a part of a rate case filing, the Commission's rules require a utility that has not earned its rate of return to explain why it has not and "what the company is doing to improve its earnings in addition to its request for increased rates." WAC 480-07-510(3)(g). Thus, the Commission rules include an expectation that a company will engage in activity such as the REC sales involved in this case to mitigate under earning and delay or reduce the level of future rate filings.



78. Based upon the record in this proceeding and the legal arguments presented in the Company's initial and reply briefs, the Company respectfully requests that the Commission adopt its forward-looking REC tracking proposal and reject the Responding Parties' retroactive tracking proposals.

DATED: November 18, 2011.

Respectfully Submitted,

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