

**BEFORE THE**  
**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKET NO. UE-100749
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	COMMENTS OF THE INDUSTRIAL
	)	CUSTOMERS OF NORTHWEST
v.	)	UTILITIES IN RESPONSE TO
	)	PACIFICORP'S OCTOBER 3, 2014
PACIFICORP D/B/A PACIFIC POWER &	)	COMPLIANCE FILING
LIGHT COMPANY,	)	
	)	
Respondent.	)	
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**I. INTRODUCTION**

*1* Pursuant to the Washington Utilities and Transportation Commission's ("Commission") Notice of Opportunity to Respond, issued in the above-captioned docket on October 9, 2014, the Industrial Customers of Northwest Utilities ("ICNU") files these comments in response to PacifiCorp's (or the "Company") October 3, 2014 compliance filing ("Compliance Filing"). ICNU recommends that the Commission reject this Compliance Filing because it does not adhere to the requirements of Commission orders issued in this docket related to the Company's accounting of renewable energy credit ("REC") revenues, nor does it reflect a multiparty agreement on the proper mechanism for reflecting these revenues in customer rates. If, however, the Commission chooses not to reject the Company's Compliance Filing, ICNU requests that the Commission suspend the Compliance Filing to allow for a full investigation.

## II. BACKGROUND

### A. PacifiCorp's Compliance Filing

2 The Company requests that it be allowed to “recover \$5.2 million in over-credited revenues from the sale of [RECs]” over a one-year period.<sup>1/</sup> A review of the filing indicates that this amount is the result of excess revenue the Company passed through to customers via Schedule 95 between April 2011 and March 2013, as well as nearly \$918,000 in interest it has accumulated on the account (almost 18 percent of the total).<sup>2/</sup> PacifiCorp states that it is requesting recovery of this amount now because its appeal of Commission Orders 10 and 11 in this docket, which required the Company to refund to customers REC amounts from January 2009 through March 2011, has been resolved.<sup>3/</sup> The Company requests an effective date of November 16, 2014, a little over a month from the date of filing.<sup>4/</sup>

### B. Procedural History

3 In Order 06, the Commission required PacifiCorp to “establish a separate tracking account for all REC proceeds received beginning January 1, 2009” and to “maintain the tracking account for subsequent periods.”<sup>5/</sup> To refund REC revenues to customers, the Commission established \$4.8 million as the initial amount PacifiCorp would credit to customers over a 12-month period.<sup>6/</sup> The Company would then “submit a full accounting of REC proceeds actually received during the preceding 12 months.”<sup>7/</sup> The Commission would then true-up the difference, after which PacifiCorp would estimate REC revenues for the following 12-month period and

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<sup>1/</sup> Compliance Filing at 1.

<sup>2/</sup> Id., Redacted Conf. Attach. D at 6.

<sup>3/</sup> Id. at 1.

<sup>4/</sup> Id.

<sup>5/</sup> Order 06 ¶ 203.

<sup>6/</sup> Id. ¶ 204.

<sup>7/</sup> Id. ¶ 205.

another true-up would follow.<sup>8/</sup> The Commission made no mention of interest amounts in Order 06.

4 On December 13, 2012, PacifiCorp filed a motion requesting that it cease crediting customers with REC revenues via Schedule 95 because it had over-credited customers and projected that it would continue to do so under Order 06's requirements.<sup>9/</sup> In a January 16, 2013 filing, PacifiCorp indicated that it had over-credited customers by approximately \$3.6 million.<sup>10/</sup> This amount did not include any interest.<sup>11/</sup>

5 The Commission eventually accepted PacifiCorp's proposal to zero out Schedule 95 in Order 13, issued on February 12, 2013,<sup>12/</sup> though not before noting that PacifiCorp had failed to comply with Order 06's requirement that it file an accounting of actual REC proceeds received during the rate year, subject to true-up.<sup>13/</sup> Order 13 also required PacifiCorp to "make the annual report and true-up filing contemplated in Order 06 by January 31 of each year."<sup>14/</sup> The Commission specified what that filing must include; again, no mention was made of interest on the account.<sup>15/</sup>

6 On February 28, 2013, the Company, on behalf of itself, ICNU, Staff, and Public Counsel, filed an agreed-upon proposal for a mechanism to account for REC revenues going forward ("Multiparty Agreement").<sup>16/</sup> Under the proposal, PacifiCorp would submit a

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<sup>8/</sup> Id. ¶ 206.

<sup>9/</sup> Docket No. UE-100749, PacifiCorp Motion to Amend Order 06 ¶ 3 (Dec. 13, 2012).

<sup>10/</sup> Docket No. UE-100749, PacifiCorp Letter re Order 12 Compliance Filing at 2 (Jan. 16, 2013).

<sup>11/</sup> See id., Redacted Conf. Attach. A at 1.

<sup>12/</sup> Docket No. UE-100749, Order 13 ¶ 7 (Feb. 12, 2013).

<sup>13/</sup> Docket No. UE-100749, Order 12 ¶ 7 (Dec. 28, 2012).

<sup>14/</sup> Id. ¶ 8.

<sup>15/</sup> Id.

<sup>16/</sup> Docket No. UE-100749, Letter from PacifiCorp re "Renewable Energy Revenue Tracking Mechanism" (Feb. 28, 2013) ("Tracking Proposal Letter").

compliance filing on May 1st of each year detailing the previous year's REC revenue.<sup>17/</sup> There would then be an annual true-up and “[i]nterest will accrue on the net balance at the Company’s Washington after-tax authorized rate of return.”<sup>18/</sup> The REC accounting the Company attached to the Multiparty Agreement did not include any interest on the REC account.<sup>19/</sup>

7 To date, the Commission has not acted upon the Multiparty Agreement. Still, on May 1, 2013, PacifiCorp submitted its first compliance filing in accordance with this agreement, which included REC revenues from April 1, 2011 through December 31, 2012.<sup>20/</sup> The Company stated that “consistent with amounts previously communicated to the Commission and other parties, the Company over-credited customers for REC ... revenues by approximately \$3.7 million” during this period.<sup>21/</sup> Unlike in previous filings, however, this compliance filing did include interest on the account balance for the entire period in the amount of \$249,366.<sup>22/</sup> According to the supporting documentation, the ending account balance as of January 2013 was \$3.677 million.<sup>23/</sup>

8 The Company submitted a second compliance filing in accordance with Order 13 and the Multiparty Agreement on May 1, 2014.<sup>24/</sup> This filing, however, only included amounts from January 2013 through April 2014.<sup>25/</sup> The Company, in effect, zeroed out the account such

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<sup>17/</sup> Id. at 1. In support of a May 1st filing date, PacifiCorp noted that, despite the Commission’s requirement that it file by January 31st of each year, it required more time to process the RECs.

<sup>18/</sup> Id. at 1-2.

<sup>19/</sup> Id. at 2 n. 2.

<sup>20/</sup> Docket No. UE-100749, Letter from PacifiCorp re “Renewable Energy Revenue May 1 Compliance Filing” at 1 (May 1, 2013) (“May 1, 2013 Filing”).

<sup>21/</sup> Id.

<sup>22/</sup> Id., Redacted Conf. Attach. A at 5.

<sup>23/</sup> Id.

<sup>24/</sup> Docket No. UE-100749, Letter from PacifiCorp re “Annual Report of Proceeds from the Sale of Renewable Energy Credits” (May 1, 2014) (“May 1, 2014 Filing”). The Commission extended Order 13’s filing deadline from January 31, 2014 to May 1, 2014 in a January 23, 2014 “Notice of Extension of Deadline.”

<sup>25/</sup> Id., Redacted Conf. Attach. A at 4.

that the ending account balance in January 2013 was \$507,536 (over \$3.1 million less than reported in the May 1, 2013 compliance filing), and the total interest on the account was \$77,602.<sup>26/</sup>

9                   PacifiCorp’s current Compliance Filing, in which it seeks to recover \$5.2 million from customers, includes all REC revenues earned and credited to customers since April 2011, as well as all accumulated interest from this period.<sup>27/</sup> In some months, this interest approaches \$27,000.<sup>28/</sup> The full interest amount the Company seeks to recover from customers is \$917,933.<sup>29/</sup>

### III. ARGUMENT

10                   The Commission should not reward PacifiCorp with nearly \$1 million worth of interest on the balance in the REC tracking account simply because the Company has delayed requesting recovery of this balance until now. The Company’s previous filings in this docket have not adequately disclosed that it would seek recovery of any, let alone this level, of accumulated interest. Order 06 and Order 13 authorized annual true-ups of the account years earlier. The Company’s justification for its delay in complying with these orders – that it was waiting for the resolution of its judicial appeal of Orders 10 and 11 in this docket was resolved – is a red-herring. The revenue in the balancing account applies to REC proceeds received from April 2011 forward. PacifiCorp has never challenged the Commission’s authority to require it to refund these proceeds to customers. Accordingly, the Company’s judicial appeal in this docket,

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<sup>26/</sup>        Id.  
<sup>27/</sup>        Compliance Filing, Redacted Conf. Attach. D at 6.  
<sup>28/</sup>        Id.  
<sup>29/</sup>        Id.

which related to REC proceeds received between January 2009 and March 2011, had nothing to do with these proceeds.

11 For these and the reasons set forth below, the Commission should reject PacifiCorp's Compliance Filing and require the Company to follow the established process in this case. This would consist of the annual report and true-up filing required by Order 06 and Order 13 by January 31, 2015 – or May 1, 2015 if the Commission decides to adopt the Multiparty Agreement – for 2014 REC revenues.<sup>30/</sup> At this time, PacifiCorp can request a true-up of the over-credited amount in the REC tracking account. If interest is allowed, it should, consistent with the Multiparty Agreement, only apply to one year's balance in the account. ICNU proposes that the year to which interest applies should either be the 2014 balance (an as-yet unknown amount), which reflects the intent of the annual true-up process envisioned by the Multiparty Agreement, or, because PacifiCorp has delayed the true-up Order 06 originally contemplated, the first year immediately following that order (April 2011-March 2012), which would result in \$9,981 in interest. If, however, the Commission determines not to reject the Compliance Filing, it should suspend the filing to allow all parties to fully investigate it.

**A. The Commission Should Reject PacifiCorp's Compliance Filing.**

1. The Compliance Filing does not comply with applicable Commission orders or party agreements.

12 Under WAC § 480-07-883, a party “must strictly limit the scope of its compliance filing to the requirements of the final order to which it relates. If the commission finds that a compliance filing varies from the requirements or conditions of the order authorizing or requiring it ... the commission may reject the filing ....” PacifiCorp states that its filing is in

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<sup>30/</sup> Order 13 ¶ 8; Tracking Proposal Letter at 1.

compliance with various statutes and rules, as well as unspecified “orders in Docket UE-100749.”<sup>31/</sup> However, as the rule indicates, a compliance filing must relate to (and comply with) a specific order that authorizes or requires it.<sup>32/</sup> The applicable order here is Order 13, in which the Commission established the following requirements for PacifiCorp’s REC compliance filings:

Beginning in 2014 unless the Commission adopts a different mechanism for crediting ongoing REC sales proceeds to customers, PacifiCorp must make the annual report and true-up filing contemplated in Order 06 by January 31 of each year. That filing must include (a) the actual REC sales proceeds attributable to Washington that PacifiCorp received during the prior calendar year; (b) the total amount of Schedule 95 credits the Company provided to its customers during that calendar year; (c) a forecast of the REC sales proceeds attributable to Washington that PacifiCorp reasonably anticipates receiving during the upcoming calendar year; and (d) any proposed revision to the credit rate in Schedule 95 to be in effect during the upcoming calendar year.<sup>33/</sup>

The Compliance Filing does not adhere to Order 13’s requirements. It was filed well after the January 31st deadline (as well as the May 1st deadline in the Multiparty Agreement), and does not provide a forecast of next year’s REC proceeds. More substantively, it seeks recovery of over \$917,000 in interest that the Commission has not authorized.<sup>34/</sup> The tracking account the Commission required in Order 06 speaks only to REC revenues, not of interest on such revenues.<sup>35/</sup> Nowhere in any order issued in this docket has the Commission authorized the collection of interest on the balance in the REC tracking account.

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<sup>31/</sup> Compliance Filing at 1.

<sup>32/</sup> WAC § 480-07-883.

<sup>33/</sup> Order 13 ¶ 8.

<sup>34/</sup> *Id.*, Redacted Conf. Attach. D at 6.

<sup>35/</sup> Order 06 ¶¶ 203-06.

Nor does PacifiCorp’s Compliance Filing conform to the Multiparty Agreement.<sup>36/</sup> In that agreement, all parties agreed to include interest (either to the Company in the case of over-credits to customers, or to customers in the case of under-credits) as part of an annual true-up of the REC tracking account.<sup>37/</sup> ICNU stands by that agreement, even though it has not been approved, which is limited to one year’s worth of interest.<sup>38/</sup> As PacifiCorp’s February 28, 2013 letter to the Commission that memorialized the Multiparty Agreement states, each year there will be “true-ups for any over- or under-crediting of net revenues . . . .”<sup>39/</sup> Interest was to accrue on the “*net balance*” of this over- or under-credited amount.<sup>40/</sup> Accordingly, the parties to the agreement did not envision the accumulation of interest on the account over a multi-year period because the application of interest on the “*net balance*” contemplated that the account would be fully reconciled each year.<sup>41/</sup> Here, however, PacifiCorp seeks to apply interest to the full balance of the account, beginning April 2011.<sup>42/</sup> Far from “strictly . . . compl[ying]” with a final order,<sup>43/</sup> this proposal is entirely unsupported by any Commission order, as well as the Multiparty Agreement. The Commission should, therefore, reject the Compliance Filing.

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<sup>36/</sup> See Tracking Proposal Letter.

<sup>37/</sup> *Id.* at 1-2.

<sup>38/</sup> *Id.* at 2.

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

<sup>40/</sup> *Id.* (emphasis added).

<sup>41/</sup> In any event, the Commission has not approved this agreement. Thus, even if PacifiCorp’s Compliance Filing adheres to the terms of that agreement, it still does not meet the requirements of the rule, which requires compliance with a Commission order. WAC § 480-07-883.

<sup>42/</sup> Compliance Filing, Redacted Conf. Attach. D at 6.

<sup>43/</sup> WAC § 480-07-883.



2. The Compliance Filing is inconsistent with previous Company filings in this docket and with the intent of prior Commission orders.

14 The Company has not reported the amount of interest it seeks to recover from customers consistently in this docket. Accordingly, it is not appropriate for the Company to request that the Commission simply approve, as part of a standard compliance filing with an effective date of little over a month, the recovery of over four years' worth of interest on over-credited REC revenues, which no party nor, more importantly, the Commission, had reasonable notice the Company would seek to recover.

15 In its January 16, 2013 filing in compliance with Order 12, PacifiCorp indicated that it over-credited customers since April 2011 by approximately \$3.6 million.<sup>44/</sup> This amount did not include any interest.<sup>45/</sup> On February 28, 2013, the Company filed the letter discussing the Multiparty Agreement for a REC true-up mechanism.<sup>46/</sup> While the parties agreed to the application of interest to REC revenues as a component of an annual true-up, the supporting documentation demonstrating the balance in the account again did not include any interest.<sup>47/</sup> In its May 1, 2013 compliance filing, the Company included interest from April 2011 through April 2013.<sup>48/</sup> Then, in its May 1, 2014 filing, the Company only included REC revenue and interest for 2013.<sup>49/</sup> Finally, in its current Compliance Filing, the Company seeks the recovery of cumulative interest going back to April 2011.<sup>50/</sup>

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<sup>44/</sup> PacifiCorp Letter re Order 12 Compliance Filing at 2.

<sup>45/</sup> Id., Redacted Conf. Attach. A at 1.

<sup>46/</sup> Tracking Proposal Letter.

<sup>47/</sup> Id. at 2 n. 2.

<sup>48/</sup> May 1, 2013 Filing, Redacted Conf. Attach. A at 5.

<sup>49/</sup> May 1, 2014 Filing, Redacted Conf. Attach. A at 4.

<sup>50/</sup> Compliance Filing, Redacted Conf. Attach. D at 6.

16 If, by including nearly \$918,000 of interest in a “compliance filing,” PacifiCorp is suggesting that stakeholders or the Commission have previously approved (either implicitly or explicitly) its recovery, the Company is in error. Its inconsistent reflection of interest in the account is hardly sufficient to put stakeholders on notice that the Company would seek to collect over four years’ worth of interest, particularly without any Commission authorization.

17 Moreover, the Company’s decision to include interest over a multi-year period conflicts with its previous proposal to stop crediting customers for anticipated REC revenues via Schedule 95. On December 13, 2012, the Company filed a motion to amend Order 06, seeking to stop crediting customers for REC revenues because it had already over-credited customers and anticipated it would continue to do so under Order 06’s requirements.<sup>51/</sup> The Company noted that zeroing out Schedule 95 would be preferable to “potentially subject[ing] customers to rate surcharges in the future to balance out the REC tracker.”<sup>52/</sup> While the Commission initially rejected this request in Order 12, it did require PacifiCorp to file a “proposed revision to the credit in Schedule 95 to *reconcile the past overpayments* through credit amounts paid over the coming calendar year.”<sup>53/</sup> To comply with Order 12, PacifiCorp again proposed to zero out Schedule 95, which the Commission approved in Order 13.<sup>54/</sup> PacifiCorp has not credited any REC revenues to customers since March 2013, following Order 13’s issuance.<sup>55/</sup>

18 Based on these statements and orders, there seems to be little doubt that all parties’, and the Commission’s, understanding of the purpose of ceasing to credit customers via Schedule 95 was to reduce the negative balance in the REC tracking account by allowing

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<sup>51/</sup> PacifiCorp Motion to Amend Order 06 ¶ 3.  
<sup>52/</sup> *Id.* ¶ 16.  
<sup>53/</sup> Order 12 ¶ 10 (emphasis added).  
<sup>54/</sup> Order 13 ¶¶ 3, 7.  
<sup>55/</sup> Compliance Filing, Redacted Conf. Attach. D at 6.

PacifiCorp to retain all net REC revenues going forward. Nevertheless, this is not what has occurred under the Company's recovery proposal in its Compliance Filing. By including multiple years' worth of interest, the account's balance continued to grow even after the Company stopped crediting REC revenues to customers. For instance, in April 2013, the month after PacifiCorp zeroed out Schedule 95, the Company retained \$7,228 in REC revenue, yet applied \$26,123 in interest to the account.<sup>56/</sup> Thus, despite the fact that customers were getting nothing, their cost responsibility to PacifiCorp increased by \$18,895. In essence, the Company's inclusion of over four years' worth of interest accomplishes precisely what it stated it was trying to avoid by zeroing out Schedule 95 – it subjects “customers to rate surcharges ... to balance out the REC tracker.”<sup>57/</sup> It also does nothing to “reconcile the past overpayments” to customers the Commission was trying to accomplish by approving the discontinuance of the Schedule 95 credits.<sup>58/</sup>

19                   Conversely, if one relies on the Company's May 1, 2014 compliance filing, in which only 2013 costs and revenues are included, and interest is applied accordingly, the REC account balance decreases by nearly \$2,000 in April 2013.<sup>59/</sup> Moreover, if one relies on the Company's filings at the time it requested to cease crediting customers via Schedule 95, which included no interest at all, the balance would be reduced by the full \$7,228 in April 2013.<sup>60/</sup> These previous filings adhere to the intent behind zeroing out Schedule 95. They also better reflect the Compliance Filing's purported purpose, which is to recover “over-credited revenues

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<sup>56/</sup>

Id.

<sup>57/</sup>

PacifiCorp Motion to Amend Order 06 ¶ 16.

<sup>58/</sup>

Order 12 ¶ 10.

<sup>59/</sup>

May 1, 2014 Filing, Redacted Conf. Attach. A at 4.

<sup>60/</sup>

PacifiCorp Letter re Order 12 Compliance Filing, Redacted Conf. Attach. A at 1.

from the sale of [RECs].”<sup>61/</sup> Given this purpose, the Commission should not approve a filing in which nearly 20 percent of the Company’s recovery will be based not on such REC revenues, but rather, solely on interest accumulation.

**B. If the Commission does not reject PacifiCorp’s Compliance Filing, it should suspend the filing to allow parties to fully investigate it.**

20 PacifiCorp’s Compliance Filing proposes to increase customer rates by \$5.2 million.<sup>62/</sup> Under RCW § 80.28.060(1), the Commission may either: (1) approve the proposed rate change as filed after 30-days’ notice; or (2) suspend the proposed rate change for further investigation. “The first option is available only if [the Commission is] fully satisfied the proposed rate is fair, just, reasonable, and sufficient. When ... [the Commission is] not fully satisfied, [it] reject[s] the first option ....”<sup>63/</sup>

21 The interest-related issues addressed above alone make it difficult to see how the Commission could be “fully satisfied” that PacifiCorp’s proposed rate increase is fair, just, reasonable, and sufficient based solely on the Company’s Compliance Filing. Moreover, other details of the filing also must be investigated. For instance, page 6 of Attachment D indicates that the Company lost money – as much as \$212,482 – on RECs in a number of months during the applicable recovery period. The Company also includes over \$6.7 million in Washington renewable portfolio standard compliance expenses in the tracking account.<sup>64/</sup> These costs, as well as potentially other aspects of the Compliance Filing, should be reviewed for prudence before being passed on to customers.

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<sup>61/</sup> Compliance Filing at 1.

<sup>62/</sup> Id.

<sup>63/</sup> WUTC v. Puget Sound Energy, Docket No. UE-981238, 1999 Wash. UTC LEXIS 127, 4th Supp. Order at \*7-\*8 (April 5, 1999).

<sup>64/</sup> Compliance Filing, Redacted Conf. Attach. D at 1.

### III. CONCLUSION

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For the foregoing reasons, ICNU recommends that the Commission reject PacifiCorp's Compliance Filing and require the Company to refile in 2015, consistent with Orders 06 and 13 and the Multiparty Agreement, should the Commission choose to adopt it. If interest is to apply to the account, it should attach either to the one-year account balance for 2014 or to the first year following Order 06's issuance. If the Commission does not reject the Compliance Filing, ICNU respectfully requests that it suspend the filing to allow all parties to conduct a full investigation to ensure accuracy in the numbers as well as prudence in the decision surrounding the REC "losses."

Dated in Portland, Oregon, this 17th day of October, 2014.

Respectfully submitted,

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