

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

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

Respondent.

DOCKET UE-100749

COMMISSION STAFF'S REPLY TO
THE RESPONSES TO PACIFICORP'S
COMPLIANCE FILING OF
OCTOBER 3, 2014

I. INTRODUCTION

1 Commission Staff submits these comments in reply to the responses of the Industrial Customers of Northwest Utilities ("ICNU") and Public Counsel to PacifiCorp's Renewable Energy Revenue Adjustment compliance filing of October 3, 2014 ("Compliance Filing"). Staff does not object to further limiting, beyond Staff's own recommendation, the amount of accrued interest that PacifiCorp may be authorized to collect on the over-credited renewable energy credit ("REC") proceeds. Staff however believes that this issue should be resolved without further delay, and therefore objects to ICNU's request that the Commission either reject PacifiCorp's Compliance Filing or suspend it to allow all parties to more fully investigate it.

II. BACKGROUND

2 Public Counsel, ICNU, and Staff all urge the Commission to limit the amount of accrued interest that PacifiCorp is allowed to recover for the over-credited REC proceeds. Public Counsel and ICNU each recommend that the Commission limit the amount of accrued interest to a greater extent than Staff proposed in its comments dated October 17, 2014.

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Public Counsel and ICNU both assert that PacifiCorp was required to make a true-up filing in 2013 and 2014 as part of its REC revenue annual report pursuant to paragraph 8 of Order 13, and failed to do so.¹ Public Counsel and ICNU each further argue that PacifiCorp also failed to abide by the Multiparty Agreement, which they assert clearly calls for annual true-ups on May 1 of each year.² The Multiparty Agreement referenced by these parties was implicitly recognized, although not formally approved, by the Commission.³ While Public Counsel and ICNU seem to agree as to the import of the Multiparty Agreement, each recommends a different remedy.

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Public Counsel does not oppose PacifiCorp’s recovery of the principle of the over-credited REC proceeds, but it recommends that the total interest accrued on the balance beginning May 1, 2013, through the requested effective date of this filing, be disallowed for recovery.⁴ ICNU requests that the Commission reject PacifiCorp’s Compliance Filing and require the Company to follow the processes established by Order 6 and Order 13, or suspend the filing to allow all parties to fully investigate its facts and possible remedies.⁵ ICNU additionally recommends that “[i]f interest is allowed, it should, consistent with the Multiparty Agreement, only apply to one year’s balance in the account.”⁶

¹ *WUTC v. PacifiCorp, d/b/a Pacific Power & Light Co.*, Docket UE-100749, Comments of Public Counsel to PacifiCorp Compliance Filing (Confidential), p. 2 (Oct. 17, 2014); *WUTC v. PacifiCorp*, Docket UE-100749, Comments of Industrial Customers of Northwest Utilities in Response to PacifiCorp’s October 3, 2014 Compliance Filing, ¶ 5 (Oct. 17, 2014).
² *Id.* at p. 3-4; *Id.* at ¶ 6-7.
³ *See WUTC v. PacifiCorp*, Docket UE-100749, Notice of Extension of Deadline for Compliance Filing (Jan. 23, 2014).
⁴ *WUTC v. PacifiCorp*, Docket UE-100749, Comments of Public Counsel in Response to PacifiCorp Compliance Filing (Confidential), p. 1 (Oct. 17, 2014).
⁵ *WUTC v. PacifiCorp*, Docket UE-100749, Comments of Industrial Customers of Northwest Utilities in Response to PacifiCorp’s October 3, 2014 Compliance Filing, ¶ 11 (Oct. 17, 2014).
⁶ *Id.*

III. DISCUSSION

A. Staff Agrees that PacifiCorp should have Requested Annual True-Ups of its REC Sales Proceeds.

5 Staff agrees with Public Counsel and ICNU that Order 13 obligated PacifiCorp to true-up the over-credited REC revenues, and that the Multiparty Agreement reinforced the Company's responsibility to do so. Staff in particular agrees with Public Counsel that PacifiCorp's basis for why it did not pursue recovery until now—due to the ongoing appeal over REC revenues pre-April 2011—is without merit. As Public Counsel notes: (i) the appeal was initiated prior to the Multiparty Agreement; (ii) the appeal did not implicate the over-credited REC revenues for which the Company now seeks to recover; and (iii) the Commission provided explicit guidance to PacifiCorp regarding its 2014 REC compliance that directed the Company to make an REC compliance filing and true-up by May 1, 2014.⁷ Moreover, the fact that no party contested the information-only REC compliance filings submitted in May 2013 and May 2014 does not excuse the Company's failure to request a true-up with those filings. As noted by Public Counsel: "PacifiCorp has the obligation to make reasonable and prudent decisions on regulatory matters and to minimize costs to its customers."⁸ Staff agrees with Public Counsel. PacifiCorp should have requested true-ups of the post-April 2011 over-credited REC proceeds in 2013, and again in 2014, when it made its compliance filings pursuant to Order 13.

6 As Public Counsel correctly notes, the Commission tasked the parties to develop a mechanism for crediting to customers the proceeds from the sale of RECs. The parties agreed to such a mechanism in the Multiparty Agreement that was submitted to the

⁷ *WUTC v. PacifiCorp*, Docket UE-100749, Comments of Public Counsel to PacifiCorp Compliance Filing (Confidential), p. 5 (Oct. 17, 2014).

⁸ *Id.* at p. 6.

Commission via a joint letter on February 28, 2013.⁹ The Multiparty Agreement allowed interest to accrue on the net balance of the REC revenues at the Company's Washington after-tax authorized rate of return.¹⁰ It also called for annual true-ups of the net balance in the REC revenue account.¹¹ Accordingly, the Multiparty Agreement allowed for interest to accrue as the balance accumulated over the course of the compliance year and over the course of the subsequent year as the balance was paid off. While the Commission did not formally approve the Multiparty Agreement,¹² it subsequently recognized it and acted consistent with its filing date when it extended the deadline for the Company to comply with Order 13.¹³

B. Staff does not Object to Limiting Beyond its Initial Recommendation the Accrued Interest that PacifiCorp is Allowed to Recover.

7 Public Counsel, ICNU, and Staff agree that the Commission should limit the amount of accrued interest that PacifiCorp is allowed to recover on the over-credited REC proceeds. Public Counsel and ICNU however would further limit the accrued interest the Company is authorized to recover.

8 Public Counsel does not oppose PacifiCorp's recovery of the principle, but recommends that the Commission disallow for recovery the total interest accrued on the over-credited REC revenues balance beginning May 1, 2013—the date upon which PacifiCorp should have first requested a true-up in accordance with the Multiparty Agreement. Staff acknowledges that the vast majority of the accrued interest that

⁹ *WUTC v. PacifiCorp*, Docket UE-100749, Joint Letter re: Renewable Energy Revenue Tracking Mechanism (Feb. 28, 2013).

¹⁰ *Id.* at p. 2.

¹¹ *Id.* at p. 1. The first annual true-up should have occurred one-year and thirty days after the Company's May 1 compliance filing.

¹² *WUTC v. PacifiCorp*, Docket UE-100749, Notice Providing Opportunity to File in Compliance with Orders 10 and 11 (Mar. 8, 2013).

¹³ *WUTC v. PacifiCorp*, Docket UE-100749, Notice of Extension of Deadline for Compliance Filing (Jan. 23, 2014).

PacifiCorp now seeks to recover is a result of the Company's failure to request a true-up on May 1, 2013, as required by the Multiparty Agreement. However, under the Multiparty Agreement as Staff understands it, this treatment would also deny the Company a marginal amount of interest that would have accrued during the year period over which the annual true-ups took place and on any over-credited REC proceeds that occurred from May 1, 2013, through December 31, 2014.

9 ICNU suggests that if interest is allowed, it should only apply to one year's balance in the account.¹⁴ ICNU proposes that the year to which interest applies "should either be the 2014 balance . . . which reflects the intent of the annual true-up process envisioned by the Multipart Agreement, or, because PacifiCorp has delayed the true-up process Order 06 originally contemplated, the first year immediately following that order (April 2011-March 2012), which would result in \$9,981 in interest."¹⁵

10 Interest was to accrue on the over-credited REC proceeds balance in accordance with the terms of the Multiparty Agreement. Staff's understanding of the Multiparty Agreement is explained above. As a matter of policy, Staff does not object to the proposals of Public Counsel or ICNU. Staff is satisfied with any alternate proposal that would further disallow, beyond its own recommendation, the amount of accrued interest that PacifiCorp may recover as a consequence for the Company's failure to make a timely true-up request.

C. The Commission should Reject ICNU's Request to Reject PacifiCorp's Compliance Filing, or to Suspend it to Allow for Further Investigation, and Instead Resolve this Issue without Further Delay.

11 ICNU requests that the Commission reject PacifiCorp's Compliance Filing and require the Company to follow the processes established by Order 6 and Order 13. These

¹⁴ *WUTC v. PacifiCorp*, Docket UE-100749, Comments of Industrial Customers of Northwest Utilities in Response to PacifiCorp's October 3, 2014 Compliance Filing, ¶ 11 (Oct. 17, 2014).

¹⁵ *Id.*

orders would require the Company to file its annual report and true-up filing for 2014 REC revenues by January 31, 2015—or May 1, 2015, if the Commission decides to adopt the Multiparty Agreement.¹⁶ If the Commission decides not to reject the Compliance Filing, ICNU requests that it suspend the filing to allow all parties the opportunity to fully investigate it.¹⁷ The Commission should reject ICNU’s requests to reject or suspend the Compliance Filing, and instead resolve this matter without further delay, for several reasons.

1. The Commission has the authority to dispense of this issue without the need for further filings or investigation.

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ICNU notes that 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”¹⁸ While the Commission may choose to reject the filing for not strictly complying with the order authorizing or requiring it, the Commission is not obligated to do so. As more fully explained below, the record is developed sufficiently for the Commission to make a decision regarding the Company’s recovery of the over-credited REC revenues. Given the unique circumstances that surround this issue—namely that the Commission did not formally approve the Multiparty Agreement because it sought a solution that addressed all REC revenues (both prior and subsequent to April 2011) and that the REC revenues prior to April 2011 were the subject of a lengthy appeal—the Commission should not reject the Company’s Compliance Filing even if it finds that it did not strictly comply with its orders.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ WAC § 480-07-883 (emphasis added).

ICNU also asserts that “[u]nder 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.”¹⁹ The Commission however is not limited to those two options as ICNU implies. RCW 80.28.060(1) is qualified by its opening clause, which states, “Unless the commission otherwise orders”²⁰ Moreover, RCW 80.28.060(1) provides:

The commission, for good cause shown, may allow changes without requiring the thirty days’ notice by duly filing, in such manner as it may direct, an order specifying the changes so to be made and the time when it takes effect. All such changes must be immediately indicated upon its schedules by the company affected.²¹

Thus, the Commission has clear discretion to stray from the framework the subsection established for providing notice of a change in tariff rates or charges if necessary. Here, in addition to the unique circumstances that surround this issue, the Company’s Compliance Filing attests that it will published a notice to customers as required by RCW § 80.28.060 of its intent to recover the \$5.2 million in over-credited REC proceeds.²² If the Commission decides to disallow a portion of the accrued interest on the REC proceeds as Public Council, ICNU, and Staff all urge, the rate increase would be reduced beyond that amount for which the Company provided notice. The Company’s published notice is sufficient, even if the Commission decides to reduce that amount. In sum, the Commission has the authority to dispense of this issue without the need for further filings or investigation.

¹⁹ RCW § 80.28.060(1).

²⁰ *Id.*

²¹ *Id.*

²² *WUTC v. PacifiCorp*, Docket UE-100749, Renewable Energy Revenue Adjustment Compliance Filing, p. 1, Attachment A (Oct. 3, 2014).

2. The record is developed sufficiently for the Commission to make a decision regarding the Company's recovery of the over-credited REC revenues.

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The facts at issue here are not in dispute; the questions that remain are of law and policy. The Company has provided a full accounting of the revenues from the sale of RECs that it has over-credited to customers in its Compliance Filing.²³ The parties all agree that the Company is entitled to recover the principle of the REC proceeds balance, and they agree on the amount of the principle. The parties have also already agreed in principle to how interest should accrue on the balance in the Multiparty Agreement.²⁴ The only issues in dispute are whether PacifiCorp should have requested a true-up of the balance of REC proceeds sooner, and what portion of the accrued interest should be disallowed as a result of a delayed true-up request. Postponing the Company's recovery of the over-credited REC proceeds would not serve justice by providing the Commission with better information on which to base its decision. On the contrary, it would only harm the Company and its customers by further delaying an issue that should have already been resolved; the delay would exacerbate the lost time-value-of-money for which the interest rate is designed to compensate. Accordingly, the Commission should reject ICNU's request to reject or suspend the Compliance Filing, and instead resolved the issue without further delay.

D. The Commission Should Allow for Recovery of the Over-Credited REC Proceeds, but Disallow a Portion of the Accumulated Interest that PacifiCorp Requests, Effective November 16, 2014.

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Staff continues to support a rate adjustment that is recovered through monthly bill adjustments over a two-year period and is limited to \$5,063,704 with interest accrued until November 16, 2014—the day the Company requests to begin recovery. Staff's proposal is

²³ *Id.* at Attachment C, Confidential Attachment D.

²⁴ *WUTC v. PacifiCorp*, Docket UE-100749, Joint Letter re: Renewable Energy Revenue Tracking Mechanism (Feb. 28, 2013).

based on the mechanism in the Multiparty Agreement to credit customers for REC proceeds, which both anticipated the accrual of interest and would have effectively limited that accrual via annual true-ups. The annual true-ups would have also served to extend the amount of time in which customers would have repaid the over-credited REC proceeds by limiting the amount customers would have to pay per year to the balance that accumulated over the previous year. Staff's proposal is a compromise that serves to both reasonably approximate the interest that should have accrued on the balance of REC proceeds according to the Multiparty Agreement, and mitigate the rate impact on customers that would result from having to pay the entire sum over a one-year period.

IV. CONCLUSION

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Staff requests that the Commission allow for recovery of the over-credited REC proceeds effective November 16, 2014, through monthly bill adjustments over a two-year period. Staff does not object to any alternate proposal that would further limit, beyond Staff's own recommendation, the amount of accrued interest that PacifiCorp may recover on the over-credited REC proceeds. The Commission however should reject ICNU's request that it either reject or suspend PacifiCorp's Compliance Filing.

DATED this 28th day of October 2014.

Respectfully submitted,

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