

**BOEHM, KURTZ & LOWRY**

ATTORNEYS AT LAW  
36 EAST SEVENTH STREET  
SUITE 1510  
CINCINNATI, OHIO 45202  
TELEPHONE (513) 421-2255  
TELECOPIER (513) 421-2764

**VIA ELECTRONIC MAIL AND  
OVERNIGHT MAIL**

March 17, 2010

Commission Secretary  
Washington Utilities and Transportation Commission,  
P.O. Box 47250  
1300 S. Evergreen Park Drive, S.W.  
Olympia, Washington 98504-7250

***Re: Docket No. UE-070725***

Dear Ms. Washburn:

Please find enclosed the original and (10) copies of the INITIAL BRIEF OF THE KROGER CO. filed in the above-referenced matter. Please note that we also filed the above via electronic mail on same date.

By copy of this letter, all parties listed on the Certificate of Service have been electronically served. Please place this document of file.

Very Truly Yours,



Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq.  
**BOEHM, KURTZ & LOWRY**

MLKkew  
Enclosures  
cc: Certificate of Service

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing on all parties by regular U.S. mail and electronic mail (when available) this 28<sup>th</sup> day of January, 17<sup>TH</sup> day of March, 2010.

A handwritten signature in cursive script, appearing to read 'KJ Boehm', is written above a horizontal line.

Kurt J. Boehm, Esq.

MASTER SERVICE LIST

As of: 01/28/10 Docket: UE-070725 Page: 1  
 Name: Puget Sound Energy (E012)  
 Comments: In the Matter of the Petition of Puget Sound Energy for an Accounting Order.  
 Original MSL Date: 04/16/07

Status Name and Address..... Phone & Fax..... Added.... By.

Pet	QUALITY FOOD CENTERS, INC. 10116 N.E. 8TH STREET BELLEVUE WA 98004	PH: FX:	11/06/09 JH
Pet	FRED MEYER STORES, INC. 3800 SOUTHEAST 2ND STREET PORTLAND OR 99202	PH: FX:	11/06/09 JH
Pet	THE KROGER CO. ATTN: CORPORATE ENERGY MANAGER 1014 VINE STREET CINCINNATI OH 45202 E-mail: dgeorge@kroger.com	PH: (513) 762-4538 FX: (513) 762-4012	11/06/09 JH
Pet	TOM DEBOER DIRECTOR, RATES & REGULATORY AFFAIRS PUGET SOUND ENERGY (E012) PO BOX 97034, PSE-08N BELLEVUE WA 98009-9734 E-mail: tom.deboer@pse.com	PH: (425) 462-3272 FX: (425) 462-3414	04/16/07 MS
Pet	KARL KARZMAR REGULATORY RELATIONS PUGET SOUND ENERGY PO BOX 97034 PSE-08N BELLEVUE WA 98009-9734 E-mail: karl.karzmar@pse.com	PH: (425) 456-2797 FX: (425) 462-3414	04/16/07 MS
PetC	KURT J BOEHM ATTORNEY BOEHM, KURTZ & LOWRY Representing The Kroger Co. 36 E. SEVENTH ST. STE 1510 CINCINNATI OH 45202	PH: (513) 421-2255 FX: (513) 421-2764	11/06/09 JH
PetC	SHEREE CARSON PERKINS COIE Representing Puget Sound Energy 10885 N.E. FOURTH STREET STE 700 BELLEVUE WA 98004-5579 E-mail: scarson@perkinscoie.com	PH: (425) 635-1400 FX: (425) 635-2400	04/16/07 MS
PetC	MICHAEL L KURTZ ATTORNEY BOEHM, KURTZ, & LOWRY Representing The Kroger Co. 36 E. SEVENTH ST. STE 1510	PH: (513) 421-2255 FX: (513) 421-2764	11/06/09 JH

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Status Name and Address..... Phone & Fax..... Added.... By.

CINCINNATI OH 45202  
 E-mail: mkurtz@bkllawfirm.com

I	NW ENERGY COALITION 811 1ST AVE STE 305 SEATTLE WA 98104	PH: FX:	11/20/09 SE
I	MICHAEL EARLY EXECUTIVE DIRECTOR INDUSTRIAL CUSTOMERS OF NORTHWEST UTILIT 333 SW TAYLOR ST. STE 400 PORTLAND OR 97204 E-mail: mearly@icnu.org	PH: (503) 239-9169 FX: (503) 241-8160	10/22/09 JH
I	RONALD L ROSEMAN ATTORNEY AT LAW 2011 - 14TH AVENUE EAST SEATTLE WA 98112 E-mail: ronaldroseman@comcast.net	PH: (206) 324-8792 FX: (206) 568-0138	12/04/09 JH
IC	GLENN AMSTER RENEWABLE NORTHWEST PROJECT LANE POWELL PC 1420 FIFTH AVENUE STE 4100 SEATTLE WA 98101-2338	PH: (206) 223-6241 FX:	11/25/09 JH
IC	DANIELLE DIXON SENIOR POLICY ASSOCIATE NW ENERGY COALITION Representing NW Energy Coalition 811 1ST AVENUE STE 305 SEATTLE WA 98104 E-mail: danielle@nwenergy.org	PH: (206) 621-0094 FX: (206) 621-0097	11/20/09 SE
IC	ANN ENGLISH GRAVATT SENIOR POLICY ASSOCIATE RENEWABLE NORTHWEST PROJECT 917 SW OAK STE 303 PORTLAND OR 97205 E-mail: ann@rnp.org	PH: (503) 223-4544 FX:	11/25/09 JH
IC	DAVID S JOHNSON NW ENERGY COALITION Representing NW Energy Coalition 811 1ST AVE STE 305 SEATTLE WA 98104 E-mail: david@nwenergy.org	PH: (206) 621-0094 FX: (206) 621-0097	11/20/09 SE

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 Name: Puget Sound Energy (E012)  
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 Original MSL Date: 04/16/07

Status Name and Address..... Phone & Fax..... Added.... By.

IC	IRION A SANGER DAVISON VAN CLEVE, P.C. Representing Industrial Customers of Nor 333 S.W. TAYLOR STE 400 PORTLAND OR 97204 E-mail: mail@dvclaw.com	PH: (503) 241-7242 FX: (503) 241-8160	10/22/09 JH
IC	S. BRADLEY VAN CLEVE ATTORNEY DAVISON VAN CLEVE Representing Industrial Customers of Nor 333 S.W. TAYLOR STE 400 PORTLAND OR 97204 E-mail: bvc@dvclaw.com	PH: (503) 241-7242 FX: (503) 241-8160	10/22/09 JH
AAG	SALLY BROWN ASSISTANT ATTORNEY GENERAL WUTC ATTORNEY GENERAL SECTION Representing WUTC STATE MAIL STOP 40128  E-mail: sbrown@utc.wa.gov	PH: (360) 664-1193 FX: (360) 586-5522	04/16/07 MS
AAG	ROBERT D CEDARBAUM ASSISTANT ATTORNEY GENERAL WUTC ATTORNEY GENERAL OFFICE STATE MAIL STOP 40128  E-mail: bcedarba@wutc.wa.gov	PH: (360) 664-1188 FX: (360) 586-5522	11/06/09 JH
AAG	DON TROTTER ASSISTANT ATTORNEY GENERAL WUTC ATTORNEY GENERAL SECTION STATE MAIL STOP 40128  E-mail: dtrotter@utc.wa.gov	PH: (360) 664-1189 FX: (360) 586-5522	01/25/10 JH
CP	SIMON FFITCH AAG OFFICE OF THE ATTORNEY GENERAL PUBLIC COUNSEL Representing Public Counsel 800 FIFTH AVENUE STE 2000	PH: (206) 389-2055 FX: (206) 464-6451	04/16/07 MS

MASTER SERVICE LIST

As of: 01/28/10 Docket: UE-070725 Page: 4  
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Original MSL Date: 04/16/07

Status Name and Address..... Phone & Fax..... Added.... By.

SEATTLE WA 98104-3188  
E-mail: simonf@atg.wa.gov

CP	SARAH A SHIFLEY	PH: (206) 464-6595	10/08/09 JH
	OFFICE OF THE ATTORNEY GENERAL	FX: (206) 464-6451	
	PUBLIC COUNSEL		
	800 5TH AVE STE 2000		
	SEATTLE WA 98104-3188		
	E-mail: Sarah.Shifley@atg.wa.gov		

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**Amended Petition of**

**Docket No. UE-070725**

**PUGET SOUND ENERGY, INC.,**

**For an Order Authorizing the Use of the  
Proceeds from the Sale of Renewable Energy  
Credits and Carbon Financial Instruments**

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**INITIAL BRIEF OF KROGER CO.**

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**I. INTRODUCTION**

Comes now Kroger Co. and submits this Initial Brief in the above-captioned Docket. Kroger's Brief addresses the joint proposal by Puget Sound Energy, Inc., ("PSE"), the Northwest Energy Coalition, the Renewable Northwest Project, and The Energy Project (collectively, "Settling Parties") regarding the treatment of revenues from the sale of Renewable Energy Credits ("RECs") and Carbon Financial Instruments ("CFIs").

Kroger believes that the proposal of the Settling Parties to allocate the proceeds from REC sales fails to give adequate priority to the crediting of REC sales to PSE's customers, who provide the

underlying cost recovery for the assets that make the REC sales possible. Kroger recommends that the Commission direct that 100 percent of the proceeds from REC sales be credited to customers.

Second, Kroger recommends adopting a mechanism that would place the share of REC revenues accruing to customers in a REC Revenue Tracking Account (“RRTA”) that would be paid out to customers monthly through an RRTA Surcredit on customers’ bills. For accounting purposes, the RRTA should be treated as a regulatory liability that is amortized on a three-year rolling basis and accrues interest at PSE’s authorized after-tax rate-of-return (including equity).

Finally, the RRTA Surcredit should be applied to the bills of PSE’s generation customers, rather than credited against the storm damage regulatory asset as proposed by PSE, because the benefit of REC sales is attributable to PSE’s generation assets.

## **II. ARGUMENT**

### **1. Kroger Recommends That 100 Percent Of The Proceeds From Sales Of RECs And CFIs Be Credited To Customers.**

In its Application, PSE states that it has negotiated various transactions for the sales of RECs that will significantly increase the funds that PSE will receive over the next few years. PSE and the other Settling parties are proposing to apportion the proceeds from these sales in the following manner:

(1) PSE would receive 40% of the REC sales proceeds, not to exceed \$21,062,800, to offset a portion of a receivable carried on PSE’s books for a disputed energy sale to California parties dating back to 2001;

(2) Renewable energy and energy efficiency programs targeting low-income households would receive 100% of proceeds from sales of RECs and CFIs already booked at the time of the filing in this



docket (approximately \$10 million) plus up to 20% of the proceeds from new REC sales, not to exceed \$20 million in total; and

(3) The remaining balance would be applied as a credit to customers against the regulatory asset currently being carried by PSE for recovery of storm damage costs.<sup>1</sup>

The proposal of the Settling Parties is inappropriate. The Settlement fails to give adequate priority to the crediting of REC sales to PSE's customers, who provide the underlying cost recovery for the assets that make the REC sales possible. Moreover, PSE customers currently face the prospect of a rate increase pursuant to the Company's general rate case proceeding, which is currently under consideration in Docket No. UE-090704. The reasonable likelihood of a general rate increase makes consideration of rate relief to customers all the more timely.<sup>2</sup>

The first priority in allocating the proceeds from REC sales should be the recognition of revenue credits to customers. The proposal of the Settling Parties fails to recognize this priority. It appears that the Settlement is merely a vehicle for mutual endorsement of special treatment for the constituencies of the Settling Parties. The interest of customers as a whole is not given appropriate weight in the proposal.<sup>3</sup>

Kroger recommends that 100 percent of the net proceeds from REC sales be credited to customers. REC sales occur from rate-based assets, the costs of which are recovered from customers. In this sense they are comparable to off-system sales margins and wheeling revenues. The proper ratemaking treatment from such sales is to recognize the benefits of these sales as a credit against the rates paid by customers.<sup>4</sup> This is how the sale of RECs is treated in other jurisdictions that Kroger is

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<sup>1</sup> Prefiled Response Testimony of Kevin C. Higgins at pp. 4-5.

<sup>2</sup> *Id.* at p. 5.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at p. 6.

familiar with. For example, in Utah and Wyoming, 100% of the benefit of PacifiCorp's projected test period REC sales is credited to ratepayers.<sup>5</sup>

If the Commission is persuaded by PSE's argument that it should be allowed to retain some amount of the revenue Kroger urges the Commission to greatly reduce the amount retained by PSE than the 40% of REC revenues as proposed by the Settling Parties. As stated above, ratepayers are entitled to 100% of REC revenues. Any retention of revenues above a nominal amount by the utility is not warranted as an incentive to maximize REC sales by PSE.<sup>6</sup>

2. **Kroger Recommends That REC Revenues Be Credited To Customers Using A Rolling Three-Year Amortization Method.**

Kroger recommends adopting a mechanism that would place the share of REC revenues accruing to customers in a REC Revenue Tracking Account that would be paid out to customers monthly through an RRTA Surcredit on customers' bills. For accounting purposes, the RRTA should be treated as a regulatory liability that is amortized over a reasonable period, taking into account the expectation that REC revenues are likely to accrue over a period of years, but may not be permanent. The amortization period should balance the need for speedy recognition of the REC benefit in customer rates with the desirability of rate stability. Kroger recommends a rolling three-year amortization for this purpose; meaning that each new year's accrual of REC revenues would amortize over three years.<sup>7</sup>

Because the RRTA would be booked as a regulatory liability, it would typically be treated as a deduction from rate base. However, because rate base is being independently determined in the general

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<sup>5</sup> See Utah Public Service Commission, Docket No. 09-035-23; and Wyoming Public Service Commission, Docket No. 20000-352-ER-09. Note: The Wyoming case has not yet been decided by the Commission, but in its filing PacifiCorp proposes a 100% credit to customers for test period REC revenues.

<sup>6</sup> Prefiled Response Testimony of Kevin C. Higgins at pp. 6-7.

<sup>7</sup> *Id.* at 9.

rate case proceeding, the results of which may not be reconciled with the decision in this docket, it may be more practical for interest accrual on the regulatory liability to be determined on a standalone basis.<sup>8</sup>

Prior to being distributed to customers, the share of the RRTA funds apportioned to customers represents capital that is available to PSE for corporate purposes. For this reason, regulatory liabilities (such as the proposed RRTA) are typically deducted from rate base. When a regulatory liability is deducted from rate base, customers effectively earn a return on the regulatory liability equal to the utility's after-tax rate-of-return. In lieu of deducting the RRTA from rate base, the RRTA balance should earn interest equal to PSE's authorized after-tax rate-of-return (including equity).<sup>9</sup>

In the initial year, the RRTA Surcredit should be established at a level that amortizes one-third of the RRTA balance that is placed into the account on Day 1, as well as one-third of the amount projected to be booked into the RRTA for the upcoming year ("Vintage 1"). The RRTA Surcredit would be reset each year. In the second year, the RRTA Surcredit should be established at a level that amortizes the second year of the Day 1 and Vintage 1 RRTA funds, plus one-third of the amount projected to be booked into the RRTA for the upcoming year ("Vintage 2"). In addition, the RRTA Surcredit would be adjusted to reflect interest accruals on monthly balances, as well as true-up any over or under-collections or mis-projections of revenues from the prior year. The RRTA Surcredit for subsequent years would be structured similarly to the second year. If in the future REC sales (or their equivalent) were to cease, the RRTA Surcredit would gravitate to zero as the last of the amortizations rolls off.<sup>10</sup>

Because the benefit of REC sales is attributable to PSE's generation assets, the RRTA Surcredit should be applied to the bills of PSE's generation customers. Ideally, this revenue credit would be allocated in accordance with each customer class's allocated cost responsibility for PSE's generation

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 10.

plant. However, in the current general rate case, rate spread was resolved by stipulation with no concurrence on cost-of-service methodology. Consequently, it may be more practical to allocate the RRTA Surcredit on a flat kilowatt-hour basis to all PSE retail generation customers.<sup>11</sup>

Kroger has prepared an exhibit demonstrating how its proposed rolling three-year amortization proposal would work. To best reflect the situation at hand, the exhibit incorporates PSE's previously-collected and projected REC revenues, which are classified as Highly Confidential. The illustrative example of Kroger's rolling three-year amortization proposal, including example RRTA Surcredit rates for the first three years, is presented in Exhibit No. \_\_ (KCH-2HC).

3. **The RRTA Surcredit Should Be Applied To The Bills Of PSE's Generation Customers Rather Than Credited Against The Storm Damage Regulatory Asset As Proposed By PSE.**

The RRTA Surcredit should not be credited against the storm damage regulatory asset as proposed by PSE. Storm damage costs more closely correspond to the costs of the Company's power delivery system, whereas REC sales are attributable to PSE's generation assets. Moreover, the storm damage regulatory asset is included in rate base as part of PSE's working capital, which is computed using the balance sheet method. In accordance with this method, if as part of a general rate proceeding, the storm damage regulatory asset is offset using REC proceeds, the revenue requirement would be reduced for both the electric and gas utilities. This approach would transfer part of the benefit of REC sales to PSE's gas rates, creating a mismatch between costs incurred and benefits received. To avoid such mismatches, the RRTA Surcredit should be designed to apply only to PSE's retail generation customers.<sup>12</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at pp. 11-12.

An additional reason to set up a separate tracking mechanism for the RRTA is timing. The storm damage regulatory asset is scheduled to be amortized over a ten year period, whereas a shorter, rolling three-year amortization period for the REC revenues is more appropriate. Tying recognition of the REC proceeds in rates to the storm damage regulatory asset would unduly delay the pass-through of REC revenues to customers.<sup>13</sup>

Finally, using REC proceeds to offset a regulatory asset in rate base would require coordination with the general rate case. The Commission has determined that the present Docket should be considered separately from the general rate case. As a practical matter, it appears that it is necessary to establish a separate tracking and surcredit mechanism outside the general rate case if the benefits of REC sales are to be passed through to retail customers in a timely manner. Kroger's proposal to establish an RRTA would accomplish this objective.<sup>14</sup>

DATED this 17<sup>th</sup> day of March, 2010.



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Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

**BOEHM, KURTZ & LOWRY**

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

Ph: 513-421-2255 Fax: 513-421-2764

e-mail: [mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)

[kboehm@BKLawfirm.com](mailto:kboehm@BKLawfirm.com)

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<sup>13</sup> *Id.* at 12.

<sup>14</sup> *Id.*