

July 22, 2010

VIA ELECTRONIC FILING

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

Attention: David W. Danner
Executive Director and Secretary

**RE: UE-100849 Inquiry on Regulatory Treatment of Renewable Energy Resources -
Comments**

Dear Mr. Danner:

PacifiCorp, d.b.a. Pacific Power (“PacifiCorp” or “Company”) submits the following comments in accordance with the Washington Utilities and Transportation Commission’s (“Commission”) Notice of Opportunity to File Written Comments (“Notice”) issued in Docket UE-100849 on July 1, 2010. The Company provides its comments as responses to the questions posed in the Notice. In some instances, the Company responds to individual questions. In others, the Company may provide a single response to a group of questions. The Company may also provide further information in response to these questions during the course of this proceeding.

General

- 1) *Definitions.* What is “*distributed generation*” as applied to solar PV projects?
What is an “*integrated cluster of renewable resources*”?

Response

The Company has no comment on this issue at this time, but may comment at a later date if the need should arise. The Company notes that it administers a Large Generation Interconnection Agreement (LGIA) and Small Generation Interconnection Agreement (SGIA) interconnection processes compliant with the Federal Energy Regulatory Commission pro-forma process.

Recovery of Costs and Demonstration of Need

- 2) *Determination of Prudence.* Does the Renewable Portfolio Standard (RPS) in I-937 supersede the “need requirement” used by the Commission for its determination of prudence? Why should the Commission treat the acquisition of a renewable different from the acquisition of a gas-fired plant when considering “need”?
- 3) *Integration of Renewables.* Will future acquisition of non-renewable resources that support the integration of renewable resources encounter the same demonstration of need issue? Discuss what new “litmus” tests may be necessary to evaluate the prudence of renewable integration generating resources and why the current tests may not be applicable.

Response

The RPS requirements established in I-937 do not supersede the “need requirement” but instead they should be a strong consideration in the “need requirement” used by the Commission for determination of prudence. RCW 80.04.250 grants authority to the Commission to determine the fair value of property to be considered used and useful for ratemaking purposes. RCW 19.285.050(2) provides that utilities are entitled to recover all prudently-incurred costs associated with complying with the RPS.¹ Whether a resource is acquired in compliance with the RPS should be considered when the Commission is making a determination of prudence. In the past, the Commission has allowed resources into rates that appropriately weighted “need” against other factors.

The Commission applied its standard prudence review to the Company’s recent acquisition of the natural gas fueled Chehalis Generating Plant (Chehalis). PacifiCorp presented the Chehalis acquisition for review and inclusion in rates in Docket UE-090205.² Chehalis was acquired in advance of the need to fill an energy and capacity deficit identified in PacifiCorp’s Integrated Resource Plan (IRP) because the economics made sense to acquire the resource at that time.³ The Commission found the acquisition of Chehalis to be prudent and allowed it to be placed in rates.⁴

Also in Docket UE-090205, the Commission allowed the Marengo II wind facility to be placed in rates.⁵ One of the factors the Commission considered when determining need was the

¹ RCW 19.285.040(2).

² *Washington Utilities and Transportation Commission v. PacifiCorp dba Pacific Power & Light Company*, Docket UE-090205, Order 09.

³ *Id.*

⁴ *Id.*

⁵ *Washington Utilities and Transportation Commission v. PacifiCorp dba Pacific Power & Light Company*, Docket UE-090205, Order 09.

resource enabled the Company to make progress toward complying with the RPS.⁶

The Company believes it is appropriate to consider the needs arising out of the renewable portfolio standard when considering the prudence of a resource but encourages the Commission to continue to ensure that the prudence test it applies provides sufficient flexibility to adapt to acquisitions of renewable resources for compliance with the RPS.

- 4) *Increased Certainty of Recovery of Costs of Renewables.* Should the Commission take action to provide utilities with increased certainty for recovery of costs associated with renewable resources before they are constructed or acquired? What administrative actions should the Commission take to provide such increased certainty?

Response

Yes, PacifiCorp believes it would be beneficial to provide utilities with increased certainty regarding the recovery of costs associated with renewable resources before they are constructed and acquired. In 2008, the Commission adopted rules to implement the requirements of RCW 80.80.060 regarding compliance with the greenhouse gas emissions performance standard (EPS) contained in RCW 80.80.040. The rules were adopted as WAC 480-100-405 through WAC 480-100-435. In 2009, House Bill 2129 and Senate Bill 5989, were adopted which amended certain provisions within the EPS statutes. In the amended statutes, renewable resources are deemed to be in compliance with the EPS⁷, essentially eliminating the need for a determination of compliance by the Commission. RCW 80.80.060 (6), which provides an electrical company with the ability to defer costs associated with a new long-term financial commitment, was also amended to include eligible renewable resources as defined in RCW 19.285.030, but falls short of providing increased certainty regarding the recovery of such costs associated with the construction or acquisition of the renewable resource.

PacifiCorp suggests that at the time an electrical company provides notice of the intent to defer costs associated with a long-term financial commitment for a renewable resource, the Commission should allow for a prudence determination (or approval of the acquisition of a long-term financial commitment) which would provide the electrical company with increased certainty regarding the recovery of costs associated with the new long-term financial commitment. In addition, the Commission could provide an indication of prudence associated with the costs that may be deferred for later recovery.

- 5) *Consideration of Costs for Pre-approved Facilities.* Assuming the Commission pre-approves an acquisition of a site for a renewable resource like a wind site, to what extent would the Commission be limited in its review of the costs at a later time?

⁶ Id.

⁷ RCW 80.80.040 (4).

Response

PacifiCorp does not believe that pre-approval of a project equates to preapproval of all costs associated with such project. If the Commission were to pre-approve the acquisition or construction of a facility, the Company would still have an obligation to manage the project and ensure that all costs are incurred in a prudent and responsible manner. The Commission would retain the authority to review the costs of the completed project when the Company applies for recovery of such costs in a general rate case or other type of proceeding. However, as discussed in the Company's response to 4) *Increased Certainty of Recovery of Costs of Renewables*, the Commission could provide electrical companies with guidance regarding the treatment and recovery of planned costs associated with the project.

Early Compliance with RPS

- 6) *Statutory Barrier*. Is the early acquisition of RPS resources limited by the Washington statutory provision (RCW 80.04.250) requiring an asset must be used and useful to earn a return?

Response

No. The acquisition of a renewable resource in advance of a compliance obligation date should not be considered "early" because compliance obligation dates represent a snapshot in time whereas a utility's compliance obligation changes over time as load changes. It is in the best interest of customers when a utility is able to procure renewable resources in advance of compliance dates. Such action limits customer exposure to a finite market as well as enables the utility to build a portfolio over time.

- 7) *Changing Technology*. Does a company that acquires renewable resources early, run the risk of missing future technological changes that may have the potential to reduce the costs of the new resources if acquired at a later time?

Response

No. Due to the laws of macro economics, there is no guarantee that the benefits of speculative future technological changes will not be offset by potential future higher demand (i.e., resulting from renewable portfolio standards in another Western state or states and/or demand due to potential future carbon-related legislation or taxes), a rise in major equipment costs or a rise in construction costs. It is in the best interest of customers to have a utility procure renewable resources in advance of compliance dates.

- 8) *External Incentives.* To what extent should external incentives that are short-term in nature be a factor in Commission approval of acquisition of renewable resources in advance of RPS requirements (e.g., Production Tax Credits, Investment Tax Credits and Treasury Grants)? Will the subsidized costs attributed to external incentives compensate ratepayers for early recovery in rates?

Response

Short-term external incentives should be given due consideration by the Commission in reviewing the prudence of renewable resource acquisitions. Such short-term incentives can be uncertain in nature. It is in the best interest of customers to have a utility procure renewable resources opportunistically because short-term external incentives often cannot be guaranteed to continue past a date certain. Such action by a utility limits the risk to customers of being exposed to a finite market and/or increasing costs in the future.

- 9) *Additional Flexibility:* Does the Commission presently have authority to consider a more “flexible” or “systematic approach” for assessing renewable resources? If so, what specific mechanism is needed?

Response

Please see the Company’s response to Question 2.

Renewable Energy Credits (RECs)

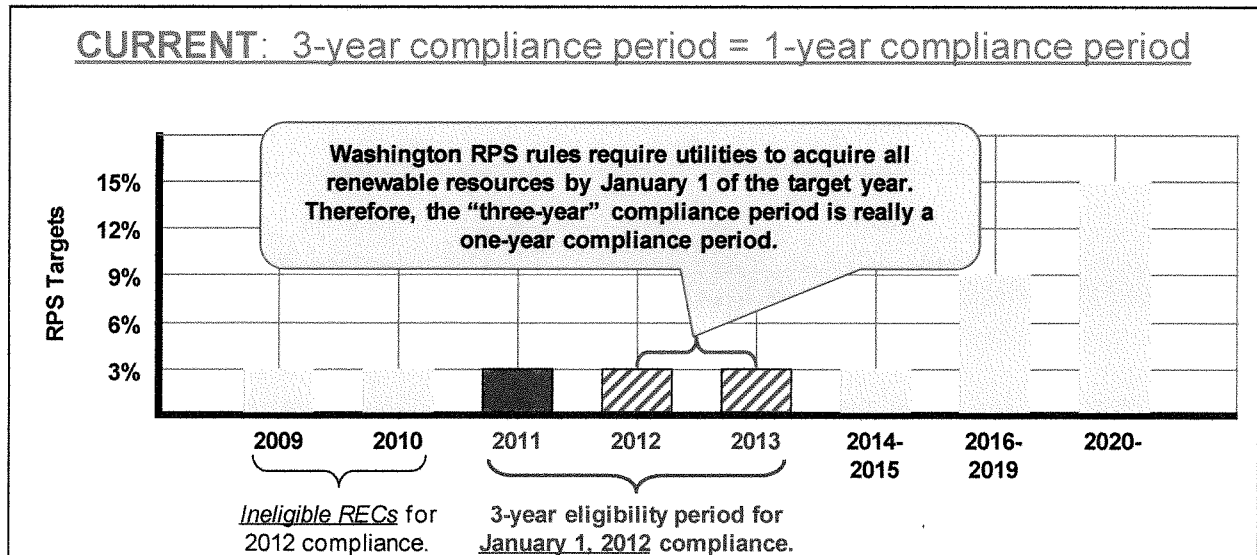
- 10) *Do Rules Conflict with Statute?* Does WAC 480-109-020 (1) (2) conflict with provisions in RCW 19.285.040(2)(e)? Discuss barriers to a company’s use of RECs caused by the statutory timing of their creation?

Response

Yes, WAC 480-109-020 (2) conflicts with provisions in RCW 19.285.040 (2)(e). The RCW provision states the following: “*The requirements of this section may be met for any given year with renewable energy credits produced during that year, the preceding year, or the subsequent year.*” The WAC provision states the following: “*(2) Renewable energy credits produced during the target year, the preceding year or the subsequent year may be used to comply with this annual renewable resource requirement provided that they were acquired by January 1 of the target year.*”

The January 1 acquisition requirement essentially eliminates the use of generation during the target year and subsequent year for RPS compliance. RCW 19.285.040(2)(e) allows utilities a full three-year generation period to meet the RPS requirements. WAC 480-109-020 (2) should

be amended by removing “provided that they were acquired by January 1 of the target year.”
The following graphic illustrates the effect of the contradiction between the statute and the rules.



- 11) *WREGIS Agent.* What agency should be responsible for oversight of registration of renewable resources and confirmation of eligibility in Western Renewable Energy Generation Information System? Discuss the duties and responsibilities of a WREGIS Agent.

Response

PacifiCorp recommends that the Commission assign a member of the Commission staff as the “WREGIS Agent”.

The duties of the Washington WREGIS Agent are not burdensome and would include the following critical activities:

- Register in WREGIS as a “State Program Administrator” and set up a state-specific Washington RPS program in WREGIS. This will allow generators to register facilities with WREGIS and submit the facility as eligible for the Washington RPS program.
- Define Washington eligibility requirements and communicate them to utilities or generators so facilities can be registered with WREGIS for the Washington RPS program.
- Review, verify and approve facilities as eligible or not eligible with the Washington RPS program under RCW 19.285.040(2) and WAC 480-109-020.
- As needed, monitor and utilize WREGIS to track compliance with the Washington RPS program requirements.

- Recommend modifications and improvements to WREGIS as necessary to support the Washington RPS program and participate in any WREGIS meetings as appropriate.

12) *REC Banking.* Does the current limited REC banking requirement impede renewable acquisition? How would unlimited banking of RECs remove barriers to the acquisition of RPS resources?

Response

Yes, the current requirement impedes renewable acquisition by creating an artificial “expiration date”. Utilities may only utilize RECs for the Washington RPS program where they are associated with renewable energy generation from the prior year, target year or subsequent year. This requirement limits renewable acquisition by arbitrarily slowing the pace of utility investment in renewable energy to align with annual RPS mandates, rather than allowing utilities to invest early and maximize benefit for customers. Considering that utilities procure renewable resources, a utility that commits to a wind farm may generate more than its RPS mandate. Additionally, without REC banking, when a utility’s renewable generation output in a given year exceeds its RPS mandate, customers lose out on the full benefits of the renewable energy.

Unlimited REC banking is in the customers’ best interest. REC banking aligns the long-term commitment associated with electric generation and allows utilities to save renewable energy credits that were not used for compliance in a target year for future year compliance. Unlimited banking of renewable energy credits would allow more flexibility for compliance, reduce market exposures and would be a cost-effective mechanism for customers in meeting RPS requirements.

Incentives

13) *Incentives.* Should the Commission provide incentives, financial or otherwise, for utilities that exceed their RPS targets or meet them early? If financial incentives were provided, what incentive design would be appropriate and would the incentives be subject to any constraints? What would be examples of non-financial incentives

Response

It is not necessary for the Commission to provide incentives, financial or otherwise, for utilities to exceed their RPS targets or meet them early unless there is a stated policy objective. In the contrary, for example, if it were a policy objective that a percentage of renewable resources in a utility’s portfolio be from a certain resource type (e.g. solar or wave) then the Commission may consider a higher return on equity where such resource types are owned by a utility or an added cost recovery factor where such resource types are owned by third parties and

under contract to a Commission regulated utility.

- 14) *Impact on Ratepayers.* What would be the impact on ratepayers of providing incentives to utilities to exceed their RPS targets or meet them early?

Response

It is in the best interest of customers to have a utility procure renewable resources opportunistically and in advance of compliance dates. Such action limits customer exposure to a finite market as well as enables the utility to build a portfolio over time. The impact to customers is a reduction in risk and the crediting of revenues associated with any off-system power sales and/or renewable energy credit sales when not needed for compliance purposes.

- 15) *Consideration of Externalities.* To what extent may, or should, the Commission require a utility to consider “positive externalities” in resource acquisition, such as impact on local economy?

Response

Consideration of externalities, such as the impact on the local economy, should not be a factor when considering resource acquisitions. As a multi-state utility, PacifiCorp acquires resources based on an integrated resource planning process through which the Company determines the best resource acquisitions for the system and PacifiCorp’s customers.

- 16) *Hydroelectric Generation.* How does the restrictive treatment of hydroelectric generation limit clean and low-cost renewable energy options to ratepayers? Does the restriction give companies a sufficient incentive to finance efficiency improvements in older hydroelectric projects?

Response

The current restriction to limit the eligibility to incremental hydroelectric generation upgrades for older hydroelectric generation facilities is not an incentive to invest in facility upgrades. The company performs upgrades on its hydro-electric facilities if cost-effective.

Hydroelectric generation is a clean and low-cost renewable energy resource and has been accepted as an eligible renewable resource to meet compliance in states, such as Oregon and California. For example, PacifiCorp recommends that the Commission consider supporting expansion of the definition of eligible renewable resources to include other types of hydroelectric generation. The Company suggests including facilities such as those that are certified as a low-impact hydroelectric generation facility that meets stringent requirements. A low-impact

hydroelectric generation facility is thoroughly reviewed to ensure it has taken measures to avoid or reduce its environmental impact in the following areas: river flows, water quality, fish passage and protection, watershed protection, threatened and endangered species protection, cultural resource protection, recreation, and facilities recommended for removal. These facilities receive certification that they meet the most recent and most stringent operational requirements.

Other Issues

- 17) *Allowing Expanded Area.* If the geographical area for qualifying energy was expanded to areas outside the Pacific Northwest, how would the increase in eligible resources available for RPS compliance benefit ratepayers? To what extent would the expansion of the geographical “footprint” allow for additional delivery flexibility?

Response

PacifiCorp’s customers would benefit by expanding the geographical area for qualifying energy outside the Pacific Northwest. Not only would this increase the number of eligible resources available to utilities for RPS compliance but it would help assure that a broad source of reasonable least-cost alternatives are available for consideration for RPS compliance. It is also important to consider the impact renewable portfolio standards in other states may have on Washington customers. The State of California is currently reviewing key issues related to the State’s renewable portfolio standards, including an increase in the compliance requirement to 33 percent. This will increase the demand for qualifying renewable resources across the region, potentially drive-up prices for RPS eligible renewable resources and may even create a shortage and scarcity pricing associated with RPS eligible resources. The smaller the geographic footprint a utility has to acquire eligible resources, the more cost risk customers bear. Removing geographic barriers to compliance by expanding the geographical area for eligible resources will benefit customers by expanding the alternatives available for consideration and reduce customer risk by reducing the risk that a limited number of suppliers in a limited geographic area could apply scarcity pricing tactics.

- 18) *Decommissioning Requirements.* Discuss the statutory provisions that recognize the Commission’s primacy over the decommissioning of renewable resources held by a regulated utility. To what extent are counties providing for facility decommissioning requirements for regulated utilities and can the companies quantify the excess duplicative costs?

Response

RCW 80.12.020 addresses the Commission’s purview regarding the sale, abandonment or disposal of an asset by a Commission-regulated utility. Specifically, RCW 80.12.020 states:

“No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it to do so. The commission shall not approve any transaction under this section that would result in a person, directly or indirectly, acquiring a controlling interest in a gas or electrical company without a finding that the transaction would provide a net benefit to the customers of the company.”

Each county in Washington appears to address decommissioning requirements on a county-specific basis. Because of this balkanization, it is uncertain how any given county will treat decommissioning requirements for each renewable resource they permit. It is not uncommon for a county to require a letter of credit or decommissioning bond associated with a permitted renewable resource. Some counties, however, specifically recognize that such a financial instrument is not necessary where a Commission-regulated utility is concerned. For example, the Development Agreement between Kittitas County, Washington and Wind Ridge Power Partners, LLC, states that:

“Financial Security and Utility Project Ownership. Applicant or any Transferee, as the case may be, shall obtain and provide proof of financial security for the performance of its Decommissioning obligations arising hereunder unless if, at the time the duty to provide Decommissioning security arises under Section 6.3 above, the owner of the Project is an entity, such as Puget Sound Energy, which is an investor-owned electric utility regulated by the FERC and the Washington Utilities and Transportation Commission (WUTC), in which case the obligation to fully decommission the Project when due shall be a general obligation of the investor-owned electric utility owner.”

In the event a county requires a letter of credit or decommissioning bond, notwithstanding the asset being owned by a Commission regulated utility, the excess or duplicative costs are the carrying costs associated with such financial instrument. Since the amount and timing of security required can vary by county and on a case by case basis, it is impossible to quantify an overall exact impact to customers associated with this general issue.

Utility ownership of a renewable resource is akin to utility ownership of any other form of asset. As such, the disposal of such assets is a general obligation of the utility and governed by the Commission pursuant to RCW 80.12. If a county were to require a letter of credit, a decommissioning bond or were to reserve the right to enforce decommissioning actions for each utility owned asset, renewable or not, then the public interest is not served since cost and risk to customers would be higher than need otherwise be. In the case of PacifiCorp, one county has reserved the right to require such a decommissioning bond or letter of credit associated with a renewable resource and has reserved the right to implement decommissioning unless preempted by order of any agency or court with jurisdiction.

- 19) *Cost Cap for Renewables.* Does the current cost cap provided in RCW 19.285.050 *Resource Costs*, provide effective protection for ratepayers? How specifically should the Commission implement this Cost Cap?

Response

RCW 19.285.050 provides consumer protection from excess costs for RPS compliance by creating an off-ramp for compliance in a year in which the total incremental compliance costs exceed four percent of the electric utility's annual revenue requirement for the compliance year. To implement the Cost Cap, the Company recommends that the Commission rely on a consistent methodology for the calculation of incremental costs as well as the applicable annual revenue requirement. Oregon's RPS includes a similar customer protection provision and the Oregon Commission has developed extensive rules to establish the calculation of incremental costs and the applicable revenue requirement. See OAR 860-083-0100 and -0200. Oregon electric utilities provide this information in the implementation plans and compliance reports that are filed with the commission for acknowledgment. A key consideration in the rules is that they incorporate the analytical work already being performed in the integrated resource planning and avoided cost processes in order to minimize duplication and leverage on-going efforts. Additionally, to reduce administrative complexity the interested parties in Oregon are working to develop standard reporting formats, which will enable both the preparation of the reports as well as review by interested parties. To promote regional conformity and reporting parity, PacifiCorp suggests that the UTC consider adopting similar methodologies and reporting formats. Similar methodologies and reporting formats will result in a consistent Cost Cap evaluation.

- 20) *Costs and Benefits of Voluntary Green Power Programs.* How can ratepayers that participate in the voluntary green power program participate in the benefits of the program?

Response

The Company has no comment on this issue at this time, but may comment at a later date if the need should arise.

PacifiCorp appreciates the opportunity provide comments. If you have any questions regarding these comments, please contact Cathie Allen, Regulatory Manager, (503) 813-5934.

Sincerely,



Andrea L. Kelly
Vice President, Regulation