

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**BRIEF OF
PUGET SOUND ENERGY, INC.**

**REDACTED
VERSION**

MARCH 17, 2010

PUGET SOUND ENERGY, INC.

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	LEGAL STANDARDS	3
III.	PSE'S PROPOSED ALLOCATION OF REC PROCEEDS IS CONSISTENT WITH THE PUBLIC INTEREST AND SHOULD BE APPROVED	3
A.	The Evidence Presented in this Case and Legal Authority Support PSE's Proposed Allocation of \$21 Million of REC Proceeds as an Offset To the California Receivable	3
1.	Allowing PSE To Retain a Portion of the REC Proceeds Aligns the Interests of Shareholders and Customers and Is Consistent with the Policy of this Commission and Commissions in Other Jurisdictions	4
2.	[REDACTED]	
a.	[REDACTED]	7
b.	[REDACTED]	11
c.	[REDACTED]	12
3.	Allocating a Share of REC Proceeds To the California Receivable Is Appropriate as Equitable Compensation for PSE's Lost Litigation Opportunity	12
a.	Assertions that PSE Would Never Have Recovered the California Receivable Lack Merit	13
b.	Public Counsel's Assertion that PSE Will Recognize Significant Profits on Sales of the Energy Underlying the REC Transactions Is Inaccurate	15
4.	Customers and Shareholders Should Share in the Benefits	16

REDACTED

a.	Customers Do Not Own Utility Property; They Pay For Electric Service	16
b.	PSE's Proposed Allocation of REC Proceeds Is Consistent with the Benefits and Burdens Test Applied by the Commission	17
c.	Other Arguments Lack Merit and Should Be Rejected	20
B.	Allocation to Low-Income Energy Efficiency and Renewable Programs.....	21
1.	PSE's Proposal to Allocate a Portion of the REC Proceeds to Low-Income Programs Is Fair and Appropriate.....	23
a.	Funding Low-Income Energy Efficiency Programs Benefits All Customers and Is Not an Improper Subsidy	23
b.	PSE's Proposed Low-Income Conservation Programs Are Cost-Effective	26
2.	Legislation, Commission Precedent and Public Policy Support Low-Income Conservation Efforts	29
3.	PSE's Low-Income Renewables Proposal Should Be Approved By the Commission	30
4.	PSE and Commission Procedures Exist to Ensure Proper Oversight of Funds	32
a.	New Funds Received for Energy Efficiency and Repairs Would Be Administered as Part of PSE's Existing Weatherization Program	32
b.	Funding for Low-Income Renewable Projects Would Be Designed to Ensure Accountability	33
5.	PSE Will Explore Opportunities to Leverage Additional Funds for Low-Income Renewable Projects	35
6.	Public Counsel's Assertion that PSE Customers Pay Too Much for the Wind Projects Generating the RECs Is Unfounded.....	36
IV.	CUSTOMER CREDITING MECHANISM.....	37
V.	REPORTING AND ACCOUNTING	37
A.	Public Counsel's Proposed Reporting Requirements Are Unnecessary and Duplicative.....	37
B.	The Proposed Accounting Treatment Is Appropriate	38
VI.	CONCLUSION.....	38

PUGET SOUND ENERGY, INC.

TABLE OF AUTHORITIES

Cases

<i>Bd. of Pub. Util. Comm’rs v. New York Tel. Co.</i> , 271 U.S. 23 (1926).....	17
<i>Democratic Cent. Comm. v. Wash. Metro. Area Transit Comm’n</i> , 485 F.2d 786 (D.C. Cir. 1973).....	17
<i>Gen. Tel. Co. of Nw. v. Bothell</i> , 105 Wn.2d 579, 716 P.2d 879 (1986) (citing <i>Moore v. Pacific Nw. Bell</i> , 34 Wn. App. 448, 662 P.2d 398 (1983) and <i>Allen v. Gen. Tel. Co.</i> , 20 Wn. App. 144, 578 P.2d 1333 (1978)).....	27

Statutes

RCW 19.285.040.....	36
RCW 70.164.010.....	24, 25, 29
RCW 80.01.040.....	3
RCW 82.16.110.....	35
WAC 480-109-020	36

Other Authorities

<i>Pac. Power & Light</i> , Docket No. UE -082180.....	29
WUTC Docket Nos. UE-010436, <i>et al.</i> , Revised Open Memo Meeting, (April 25, 2001)	25
WUTC Docket Nos. UE-091859, <i>et al.</i>	27
WUTC Open Meeting Memo, (Dec. 23, 2009).....	27
WUTC UE-072235, <i>et al.</i> Open Meeting Agenda (Dec. 27, 2007).....	27

Commission Decisions

<i>Am. Water Res., Inc.</i> , Docket Nos. UW-031284, <i>et al.</i> , Order 8 (Nov. 1, 2004).....	12, 17
--	--------

<i>In re Matter of the Application of Avista Corp. for Authority to Sell its Interest in the Coal-Fired Centralia Power Plant, Docket No. UE-991255, et al., Second Supplemental Order (March 6, 2000) (“Centralia Order”) ¶ 84</i>	3, 4, 17
<i>In re Matter of the Application of Okla. Gas and Elec. Co. for an Order Granting Pre-Approval to Construct the OU Spirit Wind Farm, Authorizing a Recovery Rider, and Approving Phase II Agreement with the University of Okla., Cause No. PUD 200900167, Order No. 57188 (Okla. Corp. Comm’n Oct. 15, 2009)</i>	6
<i>In re Matter of the Application of Okla. Gas and Elec. Co. for an Order of the Comm’n Granting Pre-Approval to Construct a Transmission Line, Authorizing a Recovery Rider and Approving other Associated Tariffs in Regard to its Renewable Plan, Cause No. PUD 200800148, Order No. 559353</i>	6
<i>In re Matter of the Application of Pub. Serv. Co. of Colo. for an Order Approving Regulatory Treatment of Margins Earned from Sales of SO2 Allowances, Docket No. 08A-274E, Order Addressing Exceptions (Colo. Pub. Utils. Comm’n June 2, 2009)</i>	5, 6
<i>In re Matter of the Appropriate Disposition of Idaho Power Co.’s Sulfur Dioxide Emission Allowances For 2008 and 2009, Case. No. IPC-E-08-14, et. al., Order No. 30790 (Idaho Pub. Utils. Comm’n May 1, 2009)</i>	6
<i>In re Matter of the Appropriate Disposition of Proceeds for the Sale of Idaho Power Co.’s SO2 Emission Allowances in CY 2007, Case No. IPC-E-07-18, Order No. 30529 (Idaho Pub. Utils. Comm’n April 14, 2008)</i>	6
<i>In re Matter of the Investigation of Appropriate Ratemaking Treatment of Idaho Power Co.’s SO2 Allowance Sale Proceeds, Case No. IPC-E-05-26, Order No. 30041 (Idaho Pub. Utils. Comm’n May 12, 2006)</i>	5, 6
<i>In re Petition of Avista Corp. for an Order Authorizing Implementation of a Natural Gas Decoupling Mechanism and to Record Accounting Entries Associated with the Mechanism, Docket No. UE-090134, et al., Order 10 (Dec. 22, 2009)</i>	2, 23, 30
<i>In the Matter of the Application of Puget Sound Power & Light Co. and Wash. Nat. Gas Co. Docket Nos. UE-951270 et al. 14th Supp. Order (Feb. 5, 1997)</i>	25, 29
<i>Petition of Sw. Pub. Serv. Co. for the Approval of Renewable Energy Cost Recovery Methodology in Accordance with the Renewable Energy Act, Case No. 05-00271-UT, Final Order on Recommended Decision (NM Pub. Regulation Comm’n Dec. 20, 2005)</i>	6

<i>Puget Sound Energy, Inc.’s tariff revisions, Docket Nos. UE-041571 et al. (effective Oct. 1, 2004), Docket Nos. UE-051305 et al. (effective Oct. 1, 2005), Docket Nos. UE-081577 et al. (effective Nov. 1, 2008), and Docket Nos. UE-091379 et al. (effective Oct. 1, 2009).....</i>	<i>25</i>
<i>Verified Petition of S. Ind. Gas and Elec. Co. for Issuance of a Certificate of Pub. Convenience and Necessity for Clean Coal Technology Under Ind. Code § 8-1-8.7-1, et. seq., for Approval of Clean Coal and Energy Projects Pursuant to Ind. Code § 8-1-8.8-11, et. seq., for Timely Recovery of the Capital Costs and Operating Expenses Relating Thereto, and for Approval of Financial Incentives Under Ind. Code § 8-1-8.-1, et. seq., Cause No. 42861, Order (Ind. Util. Regulatory Comm’n Feb. 22, 2006).....</i>	<i>6</i>
<i>WUTC v. Am. Water Res., Inc., Docket No. UW-031284, et al., Order 8 (Nov. 1, 2004).....</i>	<i>3</i>
<i>WUTC v. Avista Corp. Docket Nos. UE-080416, et al., Order 08 (Dec. 29, 2008).....</i>	<i>29</i>
<i>WUTC v. Puget Sound Energy, Inc., Docket No. UE-011570, et al., 12th Supp. Order: Rejecting Tariff Filing; Approving and Adopting Settlement Stipulation Subject to Modifications, Clarifications, and Conditions; Authorizing and Requiring Compliance Filing, App. A, Exh. F (June 20, 2002).....</i>	<i>29, 31</i>
<i>WUTC v. Puget Sound Energy, Inc., Docket No. UE-050870.....</i>	<i>38</i>
<i>WUTC v. Puget Sound Energy, Inc., Docket No. UE-060266, et al., Order 08 (Jan. 5, 2007).....</i>	<i>20</i>

I. INTRODUCTION

1. Puget Sound Energy, Inc. (“PSE” or “the Company”) respectfully requests that the Commission approve its proposal to defer the net revenues from the sale of Renewable Energy Credits (“RECs”) and Carbon Financial Instruments (“CFIs”) and allocate these net revenues (collectively, hereafter “REC Proceeds”) as set forth in PSE's Amended Petition for an Order Authorizing the Use of the Proceeds from the Sale of Renewable Energy Credits and Carbon Financial Instruments (“Amended Petition”). PSE's proposal for the REC Proceeds will:

- (1) provide funding for low income: energy efficiency; energy-related repairs; and renewable energy programs;¹
- (2) credit a portion of the REC Proceeds to sums owed to PSE by the California Power Exchange (“CalPX”) and California Independent System Operator (“CAISO”) for power the Company sold into California during the 2000-2001 energy crisis (the “California Receivable”); and
- (3) provide a credit to customers by offsetting the REC Proceeds against a regulatory asset, or in the alternative, provide a credit to customers through a tariff similar to the Production Tax Credit (“PTC”) tracker.

PSE further requests that the Commission approve the accounting treatment set forth in the Amended Petition.

2. PSE's proposal for the allocation of REC Proceeds aligns shareholder and customer interests by encouraging the Company's enterprising efforts in identifying and executing a

¹ The following parties joined with PSE to file Joint Testimony in support of PSE’s low income proposal: NW Energy Coalition, Renewable Northwest Project, and The Energy Project. These parties are referred to collectively, along with PSE, as the “Joint Parties,” and they join with PSE on Section III.B of this brief.

settlement of the California Receivable litigation that provides significant benefits for PSE's customers. It is consistent with the public interest and should be approved for the following reasons:

3. First, the vast majority of the proceeds will be credited to electric customers and will lower customer electric bills.
4. Second, low income customers will have increased opportunities to take advantage of energy efficiency and renewable energy, which may not otherwise be available to them. This proposed allocation is consistent with the Commission's directive to explore new approaches to promote low income conservation and identify barriers to its development.² Further, it is appropriate to flow some of the REC Proceeds into further renewable development given that the RECs derive from PSE's investment in renewable energy facilities.
5. Third, it is appropriate for PSE to retain a small percentage of the REC Proceeds as a credit against its California Receivable because the Company generated this significant benefit to customers by settling the long-standing California Receivable litigation and thus forgoing the opportunity of recovery of this receivable via the litigation. [REDACTED]

[REDACTED] Allowing PSE to retain a percentage of the REC Proceeds is consistent with the policy employed by this Commission and other commissions to encourage utilities to manage

² *In re Petition of Avista Corp. for an Order Authorizing Implementation of a Natural Gas Decoupling Mechanism and to Record Accounting Entries Associated with the Mechanism*, Docket No. UE-090134, *et al.*, Order 10 (Dec. 22, 2009) ¶ 306.

REDACTED

environmental attributes and other opportunities in a manner that maximizes value for customers and the Company.

II. LEGAL STANDARDS

6. The Commission has broad general powers to “[r]egulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation.”³ As discussed in more detail below, when determining the public interest, the Commission equitably balances the interests of ratepayers and shareholders in view of particular circumstances, relying on the broad general principle that “reward should follow risk and benefit should follow burden.”⁴

III. PSE'S PROPOSED ALLOCATION OF REC PROCEEDS IS CONSISTENT WITH THE PUBLIC INTEREST AND SHOULD BE APPROVED

A. The Evidence Presented in this Case and Legal Authority Support PSE's Proposed Allocation of \$21 Million of REC Proceeds as an Offset To the California Receivable

7. The evidence in this case, and the relevant legal authority, support PSE's proposal to credit a portion of the REC Proceeds to the California Receivable. As discussed in more detail below, [REDACTED]
- [REDACTED]
- [REDACTED] In such situations, this Commission and commissions in other jurisdictions have found it appropriate to provide an incentive to companies to pursue such benefits on behalf of customers.

³ RCW 80.01.040(3).

⁴ *In re Matter of the Application of Avista Corp. for Authority to Sell its Interest in the Coal-Fired Centralia Power Plant*, Docket No. UE-991255, *et al.*, Second Supplemental Order (March 6, 2000) (“Centralia Order”) ¶ 84; *WUTC v. Am. Water Res., Inc.*, Docket No. UW-031284, *et al.*, Order 8 (Nov. 1, 2004) ¶ 60.

8. In obtaining this benefit, PSE agreed to forego a significant receivable that it otherwise had been pursuing through legal process. If PSE had continued to litigate its claim for the California Receivable and had ultimately prevailed on its claim, PSE could have obtained more than three times the amount it is requesting in this case. Instead, PSE settled the litigation and created significant value for its customers. PSE should be permitted to credit a small percentage of the REC Proceeds to cover the \$21 million of the California Receivable that remains on its books. PSE's request is reasonable. PSE does not seek the full amount at issue in litigation, nor does it seek the interest that PSE would be entitled to collect pursuant to a FERC ruling, if PSE prevailed in the litigation.

1. Allowing PSE To Retain a Portion of the REC Proceeds Aligns the Interests of Shareholders and Customers and Is Consistent with the Policy of this Commission and Commissions in Other Jurisdictions

9. [REDACTED]

[REDACTED]

[REDACTED] The Commission

has recognized the importance of encouraging utilities to pursue opportunities that benefit both shareholders and ratepayers.⁵ As the Commission noted when considering the applications of Avista, PacifiCorp, and PSE to sell their shares of the Centralia plant, “regulators must be cautious not to apply precedent in a way that could inhibit utilities from pursuing opportunities beneficial to both ratepayers and shareholders.”⁶ The Commission should continue to follow this

REDACTED

⁵ See e.g., Centralia Order at ¶ 84.

⁶ Centralia Order at ¶ 85, *see also id.* at ¶ 185 (recognizing that gain sharing can be appropriate “based on the sharing notion that a small share of the gain can serve the role of encouraging the utility to maximize the sale proceeds, akin to a brokerage commission”) (Hemstad, C., dissenting).

reasoning.⁷ This is also consistent with the reasoning of commissions in other jurisdictions that have recognized the importance of encouraging utilities to manage environmental attributes in a manner that maximizes value for customers.⁸ For example, the Public Service Commission of Colorado recently considered how sulfur dioxide (“SO₂”) allowance proceeds should be allocated between the shareholders and customers of the Public Service Company of Colorado. The Colorado commission determined that although SO₂ allowances originate from ratepayer funds, sharing 15 percent of proceeds from the sale of SO₂ allowances with shareholders was appropriate as “an effective means of aligning the interests of [the utility] and the ratepayers, as much as possible.”⁹ Numerous commission decisions in other jurisdictions have allocated a

⁷ The argument that PSE should not receive a share of the REC Proceeds, because incentive mechanisms are not “easily implemented” and are “highly vetted in front of the Commission,” Parvinen, TR. 203:25-204:4, misses the point. PSE is not requesting an incentive mechanism. Rather, PSE seeks to retain a small percentage of the REC Proceeds obtained through an enterprising settlement of its litigation, and the Commission has allowed similar sharing as a method of encouraging utilities to pursue opportunities that benefit shareholders and customers.

⁸ See, e.g., *In re Matter of the Application of Pub. Serv. Co. of Colo. for an Order Approving Regulatory Treatment of Margins Earned from Sales of SO₂ Allowances*, Docket No. 08A-274E, Order Addressing Exceptions ¶¶ 11–13 (Colo. Pub. Utils. Comm’n June 2, 2009); *In re Matter of the Investigation of Appropriate Ratemaking Treatment of Idaho Power Co.’s SO₂ Allowance Sale Proceeds*, Case No. IPC-E-05-26, Order No. 30041 p.4 (Idaho Pub. Utils. Comm’n May 12, 2006) (“Sharing the [SO₂ allowance] proceeds, 90% to customers and 10% to shareholders, will sufficiently align the interests of the Company’s shareholders and customers, and provide a financial incentive to the Company to maximize any SO₂ allowance sales for the benefit of both shareholder and customer.”).

⁹ *In re Matter of the Application of Pub. Serv. Co. of Colo. for an Order Approving Regulatory Treatment of Margins Earned from Sales of SO₂ Allowances*, Docket No. 08A-274E, Order Addressing Exceptions (Colo. Pub. Utils. Comm’n June 2, 2009) ¶ 12.

share of proceeds from the sale of RECs and SO2 allowances to shareholders.¹⁰ As noted by the Idaho Commission, it is appropriate to provide a financial incentive to the Company for maximizing sales for the benefit of both shareholders and customers.¹¹ In contrast to cases in which commissions have allocated a set percentage of proceeds from the sale of environmental attributes to shareholders on an ongoing basis,¹² PSE is not asking that shareholders receive a set percentage of *all* REC sales into the future. Rather, PSE seeks only to recover the California Receivable remaining on its books and proposes that all other and future REC Proceeds accrue to the benefit of customers once the \$21 million receivable has been satisfied.¹³

¹⁰ See, e.g., *In re Matter of the Application of Okla. Gas and Elec. Co. for an Order Granting Pre-Approval to Construct the OU Spirit Wind Farm, Authorizing a Recovery Rider, and Approving Phase II Agreement with the University of Okla.*, Cause No. PUD 200900167, Order No. 57188 (Okla. Corp. Comm'n Oct. 15, 2009) p. 4, 9 (approving 80/20% split of proceeds from sales of OU Spirit Wind Farm RECs to all entities other than university); *In re Matter of the Application of Okla. Gas and Elec. Co. for an Order of the Comm'n Granting Pre-Approval to Construct a Transmission Line, Authorizing a Recovery Rider and Approving other Associated Tariffs in Regard to its Renewable Plan*, Cause No. PUD 200800148, Order No. 559353, Exh. A. p. 5 (Okla. Corp. Comm'n Aug. 25, 2008) (approving 80/20% split of REC Proceeds from specified resources); *Petition of Sw. Pub. Serv. Co. for the Approval of Renewable Energy Cost Recovery Methodology in Accordance with the Renewable Energy Act*, Case No. 05-00271-UT, Final Order on Recommended Decision p. 4 (NM Pub. Regulation Comm'n Dec. 20, 2005) (adopting 95/5% split of REC Proceeds from specified resources); *Verified Petition of S. Ind. Gas and Elec. Co. for Issuance of a Certificate of Pub. Convenience and Necessity for Clean Coal Technology Under Ind. Code § 8-1-8.7-1, et. seq., for Approval of Clean Coal and Energy Projects Pursuant to Ind. Code § 8-1-8.8-11, et. seq., for Timely Recovery of the Capital Costs and Operating Expenses Relating Thereto, and for Approval of Financial Incentives Under Ind. Code § 8-1-8.-1, et. seq.*, Cause No. 42861, Order, pp. 12, 17 (Ind. Util. Regulatory Comm'n Feb. 22, 2006) (approving 90/10% split of SO2 allowance proceeds); *In re Matter of the Appropriate Disposition of Proceeds for the Sale of Idaho Power Co.'s SO2 Emission Allowances in CY 2007*, Case No. IPC-E-07-18, Order No. 30529, pp. 5, 10 (Idaho Pub. Utils. Comm'n April 14, 2008) (approving 90/10% split of SO2 allowance proceeds, with \$500,000 reserved for energy education program); *In re Matter of the Appropriate Disposition of Idaho Power Co.'s Sulfur Dioxide Emission Allowances For 2008 and 2009*, Case No. IPC-E-08-14, *et. al.*, Order No. 30790, pp. 2, 4 (Idaho Pub. Utils. Comm'n May 1, 2009) (approving 95/5% split of SO2 allowance proceeds).

¹¹ See *In re Matter of the Investigation of Appropriate Ratemaking Treatment of Idaho Power Co.'s SO2 Allowance Sale Proceeds*, Case No. IPC-E-05-26, Order No. 30041 p. 4 (Idaho Pub. Utils. Comm'n May 12, 2006).

¹² See e.g., *In re Matter of the Application of Pub. Serv. Co. of Colo. for an Order Approving Regulatory Treatment of Margins Earned from Sales of SO2 Allowances*, Docket No. 08A-274E, Order Addressing Exceptions ¶¶ 13, 25 (Colo. Pub. Utils. Comm'n June 2, 2009) (allowing ongoing prospective sharing of SO2 proceeds from applicable resources subject to annual performance review).

¹³ De Boer, Exh. No. TAD-1T 8:4-9:4; De Boer, Exh. No. TAD-3HCT 17:10-11.

2.

REDACTED

10.

[REDACTED] As Kroger witness Kevin Higgins stated, “[t]he sale of RECs and CFIs is a very positive development for PSE and its customers.”¹⁴

[REDACTED]¹⁵ It is the Company’s view that this is exactly the type of creative activity that parties and the Commission should be encouraging and supporting. Kroger witness Kevin Higgins also acknowledges that such sharing can be appropriate.¹⁶

a.

11.

[REDACTED]

¹⁴ Higgins, Exh. No. KCH-1T 5:10-11.

¹⁵ De Boer, Exh. No. TAD-3HCT 16:19 – 17:1.

¹⁶ See Higgins, Exh. No. KCH-1T 3:19-21; 6:12-7:14.

¹⁷ See De Boer, Exh. No. TAD-4HC.

¹⁸ De Boer, Exh. No. TAD-3HCT 7:14-18.

[REDACTED]

[REDACTED]

[REDACTED] 19 [REDACTED]

[illegible]

21.

12. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] REDACTED [REDACTED] 23

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 24

[REDACTED]

[REDACTED] 25

[REDACTED]

[REDACTED]

[REDACTED] 26

[REDACTED]

[REDACTED]

13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 27 [REDACTED] 28

²³ De Boer, Exh. No. TAD-3HCT 9:6-8.

²⁴ See Norwood, Exh. No. SN-1HCT 14:5-9. [REDACTED]

[REDACTED]

²⁵ De Boer, Exh. No. TAD-3HCT 9:17-18.

²⁶ [REDACTED]

²⁷ See Schoenbeck, Exh. No. DWS-1CT 7:18 – 9:6.

REDACTED

³⁰ SCE, the CPUC, and FERC all recognized the interrelated nature of the settlement agreement and the REC sales contract and that the two were contingent on one another.³¹

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³³

²⁸ See De Boer, Exh. No. TAD-3HCT 18:10-13.
²⁹ De Boer, Exh. No. TAD-3HCT 18:13-16.
³⁰ See Schoenbeck, Exh. No. DWS-13 at 13, 24-25.
³¹ See Schoenbeck, Exh. No. DWS 8 at 2 (“The effectiveness of the Puget Contract is conditioned upon, among other things, approval by the FERC and CPUC of a Settlement and Release of Claims Agreement resolving claims arising from events in the California and Western Energy Markets during the period January 1, 2000 to June 20, 2001”); Exh. No. DWS-13 at 24 (“The Puget contract is contingent on, among other things, the approval by FERC and the CPUC on a Settlement that is pending at FERC.”); De Boer, Exh. No. TAD-32 ¶ 9 (noting that SCE agreed to buy “California Renewables Portfolio Standard-eligible energy” from PSE concurrent with the settlement and that the settlement requires CPUC approval of the sale).

³² See Schoenbeck, Exh. No. DWS 8 at 3.

³³ See De Boer TR. 188:18-24.

[REDACTED] 34

14. Indeed, the FERC Order Approving Settlement (“FERC Order”) confirms that as part of the settlement, CalPX will release in excess of \$59 million in principal funds and more than \$36 million in interest (for a total of \$96 million) to the settling California parties as this is the amount that was reserved for PSE's claims.³⁵ The FERC Order further confirms that the REC sales were tied to the settlement.³⁶

b. [REDACTED]

15. [REDACTED]
- [REDACTED]
- [REDACTED] 37
- [REDACTED] REDACTED [REDACTED]
- [REDACTED] 38
- [REDACTED]
- [REDACTED] 39
- [REDACTED]

³⁴ De Boer, Exh. No. TAD-3HCT 18:20–19:6.

³⁵ See De Boer, Exh. No. TAD-32 ¶ 7.

³⁶ See De Boer, Exh. No. TAD-32 ¶ 9 (noting that SCE agreed to buy “California Renewables Portfolio Standard-eligible energy” from PSE concurrent with the settlement and that the settlement requires CPUC approval of the sale).

³⁷ See Norwood, Exh. No. SN-1HCT 14:9-12.

³⁸ See De Boer, TR. 123:3-124:13; Exh. No. TAD-3HCT 11:1–12:14; Norwood, Exh. No. SN-14C at pp. 2–

3.

³⁹ [REDACTED]

c.

REDACTED

16.

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For example, PSE entered into subsequent REC sales with SCE following the settlement.⁴² But for the settlement of the California Receivable litigation, these subsequent transactions would not have occurred.

3. Allocating a Share of REC Proceeds To the California Receivable Is Appropriate as Equitable Compensation for PSE's Lost Litigation Opportunity

17.

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In this proceeding, as equitable compensation for PSE's lost litigation opportunity, which PSE gave up in exchange for REC transactions that significantly benefit ratepayers.⁴⁴ Awarding this small share of the REC Proceeds to PSE as equitable compensation is supported by Commission precedent.⁴⁵

18.

Contrary to suggestions at the hearing, the amount of the claim that PSE gave up in settlement does not equal the amount PSE seeks to recover in this case. As discussed above, the FERC Order recognized the value of the California Receivable in excess of \$95 million,

⁴⁰ See De Boer, TR. 188:16-25.

⁴¹ See De Boer, Exh. No. TAD-3HCT 19:7-11; De Boer TR. 188:18-25.

⁴² See De Boer, TR. 186:10-17, 188:24-25.

⁴³ See De Boer, Exh. No. TAD-1T 3:20-4:1.

⁴⁴ See De Boer, Exh. No. TAD-1T 15:3-8, 16:3-17:15. PSE is seeking approval to retain 40% of REC Proceeds until the \$21,062,800 California Receivable is satisfied. See De Boer, Exh. No. TAD-3HCT 15:5-6.

⁴⁵ See *Am. Water Res., Inc.*, Docket Nos. UW-031284, *et al.*, Order 8 ¶ 60 (Nov. 1, 2004) (“[T]he allocation between shareholder and customers of the gain on sale of in-service utility assets rests essentially on equitable considerations.”).

including principal and interest.⁴⁶ The \$21 million receivable PSE seeks to recover is the net amount PSE maintains on its books for financial accounting purposes.⁴⁷ In addition, FERC allows for interest on any amounts which are received.⁴⁸ In this proceeding PSE has requested only to recover the amount of the receivable remaining on its books and is not requesting recovery of the full amount it could have recovered in the litigation, or any interest on that amount.⁴⁹

a. Assertions that PSE Would Never Have Recovered the California Receivable Lack Merit

19. Public Counsel raises several unfounded arguments about the viability of PSE's California Receivable claim that should be given no weight. First, Public Counsel points to the multi-year litigation process as evidence that PSE likely would not have been able to recover the California Receivable.⁵⁰ The fact that this was complex, multi-party litigation, spanning several years, does not mean that PSE would not have prevailed in the litigation. PSE originally pursued the litigation and rejected entreaties for settlement offers because it believed it had good facts and a strong legal case and would prevail in the end.⁵¹ [REDACTED]

[REDACTED] PSE saw the opportunity to settle the ongoing litigation, recover a portion of its net receivable, and provide a valuable benefit for its customers. This opportunity was created when the Company, with the completion of its first

⁴⁶ See De Boer, Exh. No. TAD-32 ¶ 7.

⁴⁷ See De Boer, Exh. No. TAD-3HCT 17:8-9.

⁴⁸ See De Boer, Exh. No. TAD-3HCT 17:9.

⁴⁹ See De Boer, Exh. No. TAD-3HCT 17:8-11.

⁵⁰ See Norwood, Exh. No. SN-1HCT 12:17 – 13:2.

⁵¹ See De Boer, Exh. No. TAD-3HC 15:12-13.

two wind projects, had potentially valuable compliance RECs that could help California utilities meet this new demand for renewable energy.⁵²

20. Second, Public Counsel's implication that PSE would not prevail in the litigation because the California Receivable is neither the incurred cost nor the price of the energy sales under dispute⁵³ misses the point. The “prices” for power sold (and which created the first step in calculating the amount due as the California Receivable) were determined in the California-created market auction process of the California Independent System Operator (“CAISO”).⁵⁴ The amount of PSE’s California Receivable was consistent with the net amount remaining to be paid to PSE after the price adjustments that were being imposed in the FERC process.⁵⁵ There were no material price disputes pending as to those calculations, except to add interest to the amount received.⁵⁶ Significantly, the FERC Order allows for the release of \$59,849,314, the principal amount of PSE's receivables from sales made into markets operated by the CalPX and CAISO, and interest on this principal amount of \$36,800,810.⁵⁷

21. Similarly, the Commission should reject arguments that the California Receivable litigation had no value because PSE surrendered its claims against SDG&E without SDG&E purchasing RECs or paying other consideration to PSE. As Mr. De Boer testified, the three California utilities—SCE, PG&E, and SDG&E—agreed to enter into an auction process through which PSE would sell RECs to the winning bidder, provided the bids met a certain threshold price, and, in return, all three utilities—the winning bidder as well as the non-winning bidders—

⁵² See De Boer, Exh. No. TAD-3HC 12:15 – 14:2.

⁵³ Norwood, Exh. No. SN-1HCT 13:3-9.

⁵⁴ See De Boer, Exh. No. TAD-3HCT 14:6-9.

⁵⁵ De Boer, Exh. No. TAD-3HCT 14:19-21.

⁵⁶ De Boer, Exh. No. TAD-3HCT 15:1-2.

⁵⁷ See De Boer, Exh. No. TAD-32 ¶ 7.

would agree to support a settlement of all claims in the California Receivable litigation.⁵⁸ The California utilities had the opportunity to bid on a pro rata allocation of the RECs or to bid for the entire offering of two million RECs.⁵⁹ Thus the consideration PSE was to receive for giving up its claims against the California parties was the premium price for the RECs sold—either from the three California utilities together if they bid a sufficiently high price for their allocation of the RECs, or from a single utility that offered a sufficiently high price for the entire allocation of RECs. The consideration the California utilities received was the opportunity to bid on the REC sales and obtain much needed bundled RECs to meet their RPS requirements. The California utilities received further benefits from the release of escrow funds from sales made into markets operated by the CalPX and CAISO, as discussed above.

b. Public Counsel's Assertion that PSE Will Recognize Significant Profits on Sales of the Energy Underlying the REC Transactions Is Inaccurate

22. PSE will not be realizing “significant profits on sales of energy” under the REC

transaction agreements as Public Counsel has alleged.⁶⁰

[REDACTED]

[REDACTED]

[REDACTED] ⁶¹ [REDACTED]

[REDACTED] REDACTED [REDACTED] ⁶² [REDACTED]

[REDACTED]

⁵⁸ See De Boer TR. 122:19 – 125:7, 177:10-16.

⁵⁹ See De Boer, Exh. No. TAD-3HCT 8:16-20, TR. 177:20-24.

⁶⁰ Norwood, SN-1HCT 16:8-19.

⁶¹ See De Boer, Exh. No. TAD-3HCT 17:16-18; Tr. 158:13-161:22.

⁶² See Prefiled Direct Testimony (Confidential) of David E. Mills, Docket Nos. UE-090704 & UG-090705, Exh. No. DEM-1CT 25:1 – 29:20 (describing the concept of economic dispatch of PSE’s electric generation resources).

64 Even if there were an opportunity to realize significant profits, as noted in the Amended Petition, once the low income and California Receivable components are satisfied, PSE proposes to credit customers all the “revenues from the sale of RECs and CFIs, less the costs (or credits) associated with such sale or to facilitate such sale of RECs and associated energy.”⁶⁵ Thus, if PSE were to “realize significant profits” these profits would flow back to customers through the Power Cost Adjustment mechanism.

4. Customers and Shareholders Should Share in the Benefits

a. Customers Do Not Own Utility Property; They Pay For Electric Service

23. The Commission should reject arguments from parties that utility customers, by paying for utility service, have ownership rights in utility property, or in this case, have a right to all proceeds derived from the wind facilities.⁶⁶ This is not supported by legal authority or the facts presented in this case.

24. The notion that, by paying for service, ratepayers thereby acquire an ownership interest in utility assets used to provide such service has long been repudiated:

Customers pay for service, not for the property used to render it. Their payments are not contributions to depreciation or other operating expenses or to capital of the company. By paying bills for service they do not acquire any interest, legal or equitable, in

⁶³ See De Boer, Exh. No. TAD-5HC.

⁶⁴ See De Boer Tr. 161:15-22.

⁶⁵ Amended Petition ¶ 12; De Boer, Tr. 161:10-14.

⁶⁶ See, e.g., Norwood, Exh. No. SN-1HCT 10:1-19; Parvinen, Exh. No. MPP-1T 8:3-11; Schoenbeck, Exh. No. DWS-1CT 7:4-6; Higgins, Exh. No. KCH-1T 6:2-4.

the property used for the convenience or in the funds of the company.⁶⁷

Thus, “it goes without saying that consumers do not succeed to . . . gains [in value of utility properties] simply because they are users of the service furnished by the utility.”⁶⁸

25. When customers pay their electric bill they are paying for “Electric Service.” In Schedule 80 of PSE's filed tariff, “Electric Service” is defined as: “The availability of electric energy at the Point of Delivery for use by the Customer, irrespective of whether electric energy is actually used.”⁶⁹ It is absurd to suggest that every time electric customers pay their electric bill, they are purchasing a piece of an electric generation plant. Owning and operating these plants is a risk the Company manages – not the customer.

b. PSE's Proposed Allocation of REC Proceeds Is Consistent with the Benefits and Burdens Test Applied by the Commission

26. Commission authority on the sale of utility property is instructive on the issue of allocation of gains between customers and shareholders. In determining the proper allocation of gains realized from the sale of utility property, “the Commission relies on the broad principle that reward should follow risk and benefit should follow burden.”⁷⁰ Accordingly, the Commission has not hesitated to award shareholders an equitable portion of gains where shareholders have borne risks and burdens of ownership such as financial, legislative, and market risks.⁷¹

⁶⁷ *Bd. of Pub. Util. Comm'rs v. New York Tel. Co.*, 271 U.S. 23, 32 (1926).

⁶⁸ *Democratic Cent. Comm. v. Wash. Metro. Area Transit Comm'n*, 485 F.2d 786, 806 (D.C. Cir. 1973).

⁶⁹ Puget Sound Energy, Electric Tariff G, Schedule 80, paragraph 2(g).

⁷⁰ Centralia Order at ¶ 84.

⁷¹ *See id.* at ¶¶ 84–86 (awarding shareholders 50% of appreciation gain from sale of Centralia facilities); *Am. Water Res., Inc.*, Docket Nos. UW-031284, *et al.*, Order 8 (Nov. 1, 2004) (awarding shareholder 58% of gain realized from sale of one water system and 29% of gain realized from sale of another).

27. Allocation of a portion of the REC Proceeds to PSE is appropriate in light of risks that PSE bears in connection with ownership of wind generation assets. The capital costs of such projects, like all utility plant, are provided for in the first instance by the providers of debt and equity capital. Customers purchase an energy service related to such investments and receive the full benefit of these plants being in the Company's portfolio before even considering the benefits received from REC transactions. As Mr. De Boer testified, the wind resources that created the REC benefits were added to the Company's resource portfolio based on the following financial considerations: capital costs invested by the Company plus the operating costs, net of PTCs, compared to the other resource alternatives available.⁷² The Commission found that these wind resources were prudent and cost effective—absent any REC benefits—based on the Commission's prudence review.⁷³

28. At the time these resources were being developed, the markets for compliance and voluntary RECs were in their infancy; values were de minimis, renewable attribute definitions were evolving, market terms and conditions were evolving and state regulatory rules governing markets and transactions were evolving, and indeed, are still very much in a state of flux.⁷⁴ This is especially true in the state of California, which has become one of the largest compliance markets in the country.⁷⁵ Accordingly, the decision to acquire both the Hopkins Ridge and Wild Horse projects and the decision to enter into the Klondike III power purchase agreement were all made without giving weight to any potential benefits associated with prospective REC sales.⁷⁶

⁷² See De Boer, Exh. No. TAD-3HCT 4:9-12.

⁷³ See De Boer, Exh. No. TAD-3HCT 4:12-14.

⁷⁴ See De Boer, Exh. No. TAD-3HCT 4:17 – 4:21.

⁷⁵ See De Boer, Exh. No. TAD-3HCT 4:21 – 5:2.

⁷⁶ See De Boer, Exh. No. TAD-3HCT 5:2-5.

Such prospective benefits were not part of PSE's formal economic analysis of those plants.⁷⁷

These projects were determined to be cost effective, long-term energy resources without taking into consideration any value of prospective REC sales or even potential carbon related values, the markets for which were even more undeveloped at that time.⁷⁸ In those proceedings, the parties did not object to the fact that the analyses of the wind resources did not include the value of prospective REC sales, nor did they object to the fact that the Company would own the plants and bear the risks of ownership.⁷⁹ Indeed in the 2004-2006 time frame, a great many forces were arrayed opposing the creation of a Washington state renewable portfolio standard ("RPS") and even those parties that favored such a standard often expressed opposition to creating a tradable REC product. Such policy controversies continue today.⁸⁰ It is therefore, disingenuous and inequitable now for these parties to argue that the Company should be required to provide the full benefit associated with the RECs to customers without allowing the Company to recover any of the costs that gave rise to the opportunity or giving any consideration for the Company's ingenuity in creating this added value for its customers.

29. Arguments by other parties that customers pay for costs related to the wind plants that were unknown or unanticipated at the time the plants went into rates, and thus should reap unanticipated benefits that were not considered at that time, ignore the fact that [REDACTED]

REDACTED

[REDACTED]. Moreover, the Company and customers share in other benefits and unexpected efficiencies from PSE generation resources that were not anticipated at the time the plant was considered for prudence review through the sharing bands of the Power Cost Adjustment

⁷⁷ De Boer, Exh. No. TAD-3HCT 5:5-6.

⁷⁸ De Boer, Exh. No. TAD-3HCT 5:6-9.

⁷⁹ De Boer, Exh. No. TAD-3HCT 5:14-17.

⁸⁰ De Boer, Exh. No. TAD-3HCT 5:20 – 6:3.

(“PCA”) mechanism.⁸¹ It is similarly appropriate for PSE's shareholders to share a small portion of the benefit of these REC sales that do not flow through the PCA.

30. The position of Commission Staff that “all risk inherent in the investment that investors make in PSE are reflected in the cost of the capital calculated . . . by the Commission” misses the point that investors are given a *theoretical opportunity* to earn a return.⁸² However, even given that opportunity, there are unanticipated risks or benefits that shareholders face. The opportunity to earn a fair return does not eliminate these risks and the shareholders should not be precluded from the benefits. Following the Commission Staff's reasoning to its final conclusion would actually insure that the Company would not earn its return as the California Receivable would have to be written off to the income statement as a loss with no opportunity for further recovery.

c. Other Arguments Lack Merit and Should Be Rejected

31. Certain parties' argument that the California Receivable accrued during a rate stay out period is a red herring that has no relevance to the matters at issue in this proceeding. PSE used REC Proceeds that have not previously been factored into the Company's revenue requirement, and to which shareholders have a reasonable claim, to engage in settlement negotiations with the California parties. [REDACTED]

[REDACTED] **REDACTED** [REDACTED]

[REDACTED] It is irrelevant that PSE's California Receivable claim accrued during a period when PSE was limited from filing rate cases, given the shareholders legitimate

⁸¹ See De Boer TR: 115:6-116:18; 190:1-6. There is no band in which customers receive all the benefits or bear all the burdens in the PCA. In the PCA deadband, the Company bears 100% of under-recovery of power costs and receives the full benefit of any over-recovery of power costs. See *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-060266, *et al.*, Order 08 ¶ 17 (Jan. 5, 2007).

⁸² See De Boer TR. 112:9-25.

claim to these funds and the use of this asset to create a significant benefit for the Company's customers.

32. While it is true that legal fees relating to the California Receivable litigation were included in rates over the course of the litigation, this should not be a basis for reducing the amount of the shareholder recovery of REC Proceeds. PSE is not seeking to use REC Proceeds to cover the full value of the California Receivable (\$59 million for principal and \$36 million in interest); nor is it seeking the \$13 million in interest on the California Receivable remaining on its books.⁸³ These amounts could have legitimately been included in PSE's request for recovery and far outweigh the \$4 million in outside legal fees, and other Company time that may have been included in rates over the past eight years.⁸⁴ Moreover, it is appropriate to include in rates the legal expenses incurred for protection of wholesale contracts, as these legal expenses ultimately protect customers' interests as well as shareholders' interests. Further, the reserve against the California Receivable was charged to shareholders, not customers, in 2000.⁸⁵ There was no negative consequence to customers resulting from reducing the receivable amount and creating a credit reserve.

B. Allocation to Low-Income Energy Efficiency and Renewable Programs

33. PSE's proposal to use a portion of the REC Proceeds for low-income conservation and renewable energy is in the public interest and should be approved. The proceeds allocated to low-income programs would be used for: (1) energy efficiency measures and energy-related repairs; and (2) renewable energy systems for residential locations, with not less than 80 percent

⁸³ See De Boer, Exh. No. TAD-1T 8:4 – 9:4; De Boer, Exh. No. TAD-3HCT 16:5-13; De Boer, TR. 167:9–168:17.

⁸⁴ See De Boer, TR. 154:14-23; De Boer TR. 183:19-25.

⁸⁵ See De Boer, Exh. No. TAD-7C 19.

of the proceeds dedicated initially to efficiency and repairs.⁸⁶

34. As discussed in the Joint Parties' testimony, PSE would use a portion of REC Proceeds for energy efficiency measures to supplement and enhance existing efforts. Additionally, PSE would use a portion of REC Proceeds for energy-related repairs that are necessary in order to install energy efficiency measures safely and properly in some low-income homes. One of the greatest obstacles to making low-income homes more energy efficient is the degraded condition of the structures themselves, as recognized by the Legislature in Chapter 70.164 RCW. The need for repairs essentially strands the potential energy conservation that could be captured. An energy-related repair is a repair that is necessary: (1) to install an energy efficiency measure properly; (2) to protect the health and/or safety of the occupants; (3) to address an existing problem that energy efficiency retrofit could aggravate (*e.g.*, moisture/mold problem); or (4) to protect the integrity of an installed energy efficiency measure.⁸⁷ The low-income agencies have the capability to perform these repairs and related measures.⁸⁸

35. The REC Proceeds represent a stable funding source over a multi-year period, which will allow the agencies time to ramp up to a steady implementation of the funds and to enhance the application of energy efficiency over several years.⁸⁹ These funds come at a time when existing funding sources are: (1) currently inadequate; (2) diminishing; and (3) subject to increasing competition from other purposes.⁹⁰

⁸⁶ See Joint Parties, Exh. No. J-1T 12:18 – 13:4. As other funding sources become available or as the community action agencies develop greater in-house expertise in the renewable sector, PSE, the participating low-income agencies, and other stakeholders would initiate discussions about a possible reallocation of the REC Proceeds. See Joint Parties, Exh. No. J-1T 13:6-9.

⁸⁷ See Joint Parties, Exh. No. J-1T 8:9 – 9:12.

⁸⁸ See Eberdt, Sieg and Dixon, TR. 81:8 – 83:1.

⁸⁹ See Joint Parties, Exh. No. J-1T 14:2-4.

⁹⁰ See Joint Parties, Exh. No. J-1T 15:4-5.

36. Additionally, PSE would use a portion of REC Proceeds to further the application of small-scale renewable energy resources to benefit low-income occupants. These renewable energy resources could initially include solar thermal hot water and photovoltaic systems.⁹¹ By using REC Proceeds for this purpose, PSE would help provide the benefits of renewable energy – clean, stable-priced power – to a community that might not otherwise be able to afford the up-front cost of such an investment. Ultimately, the use of such funds for these purposes would expand the capacity of the eligible low-income agencies to install and maintain small-scale renewable systems, encourage a greater proliferation of renewable technology, and develop a skilled support network. And this aspect of the proposal ensures that at least some money from the sale of RECs—which are derived from renewable energy projects—goes directly into supporting the development of additional renewable energy.⁹²

1. PSE's Proposal to Allocate a Portion of the REC Proceeds to Low-Income Programs Is Fair and Appropriate

a. Funding Low-Income Energy Efficiency Programs Benefits All Customers and Is Not an Improper Subsidy

37. PSE's proposal to allocate a portion of the REC Proceeds to low income energy efficiency programs will benefit *all* customers, not just low-income customers.⁹³ As the Joint Parties testified, *all* customers benefit from the lower demand for energy, more efficient use of the distribution system and reduction in peak capacity demand that results from leveraging additional energy efficiency, which would otherwise not be performed, for low-income

⁹¹ See Joint Parties, Exh. No. J-1T 9:16-17. Depending on how quickly the technology develops, other renewable systems may be deemed appropriate. *Id.*

⁹² See Joint Parties, Exh. No. J-1T 9:14 – 10:9.

⁹³ See, e.g., *In re Petition of Avista Corp. for an Order Authorizing Implementation of a Natural Gas Decoupling Mechanism and to Record Accounting Entries Associated with the Mechanism*, Docket No. UE-090134, *et al.*, Order 10 (Dec. 22, 2009) ¶ 303 (“By reducing the Company’s natural gas load, including its peak requirements, *Avista’s conservation program benefits all customers.*” (emphasis added)).

customers.⁹⁴ Further, *all* customers benefit indirectly because the energy efficiency measures lower the low-income customers' bills, thereby lowering the cost of non-payment if it does occur, reducing dependence on bill payment assistance, and reducing the carrying cost and write-off costs of bad debt.⁹⁵

38. PSE's proposal is intended to treat PSE customers fairly and equitably by providing low-income customers equal access to energy efficiency.⁹⁶ In addition to lacking the means to pay for energy efficiency measures, low-income households' access to energy efficiency is further hampered, even under PSE's existing tariff program (Schedule 83), due to inadequate funding for repairs that are required prior to installation of energy efficiency improvements. Additional funding from REC Proceeds would help pay for needed repairs and thereby provide low-income customers with greater access to energy efficiency.⁹⁷

39. The proposed low-income program does not constitute an improper subsidy by other customer classes as Commission Staff claims. The benefits from PSE's conservation program do not return to customer classes in the same proportion that those classes fund energy efficiency.⁹⁸ Historically, commercial and industrial customers have enjoyed a disproportionate benefit in terms of the allocation of energy efficiency funds, when compared to the revenue collected from those classes.⁹⁹ Although PSE designs its energy efficiency programs to offer a mix of tariff-based programs to serve each customer sector, the budget and savings targets within each sector

⁹⁴ See Joint Parties, Exh. No. J-2T 12:7-13.

⁹⁵ See Joint Parties, Exh. No. J-2T 12:18 – 13:4; *see also* RCW 70.164.010 (“Weatherization of residences will lower energy consumption, making space heat more affordable for persons in low-income households. It will also reduce the uncollectible accounts of fuel suppliers resulting from low-income customers not being able to pay fuel bills. The program implementing the policy of this chapter is necessary to support the poor and infirm and also to benefit the health, safety, and general welfare of all citizens of the state.”).

⁹⁶ See Joint Parties, Exh. No. J-2T 13:12-13, 18-20.

⁹⁷ See Joint Parties, Exh. No. J-2T 13:15-20.

⁹⁸ See Joint Parties, Exh. No. J-2T 14:16-20.

⁹⁹ See Joint Parties, Exh. No. J-2T 14:20 – 15:3.

are generally designed to maximize the greatest amount of savings at the least overall cost to all customers.¹⁰⁰ The fact that certain customer classes at times experience a greater benefit from energy efficiency programs does not equate to an improper subsidy of those customer classes. This is particularly true where, as is the case here, the programs are intended to open up areas of conservation that previously have not been available to a group of customers, and the resulting conservation will benefit all customers by, among other things, lowering demand and thus reducing the need to buy higher cost electricity at the margin.¹⁰¹

40. Further, the Commission has approved funding mechanisms for low-income programs that spread the cost across all ratepayers.¹⁰² In one such case, Commission Staff encouraged the utility to find ways to distribute low-income funding more broadly and to explore ways that would enhance program effectiveness and coverage.¹⁰³ PSE's low-income proposal in this proceeding meets this challenge by using a portion of the REC Proceeds for repairs that open up opportunities for additional energy efficiency measures among the low-income population, while still maintaining an overall cost-effective conservation program. Furthermore, the ability to

¹⁰⁰ See Joint Parties, Exh. No. J-2T 15:3-7.

¹⁰¹ See Joint Parties, Exh. No. J-2T 14:17-19; see also RCW 70.164.010 ("The legislature finds and declares that weatherization of the residences of low-income households will help conserve energy resources in this state and can reduce the need to obtain energy from more costly conventional energy resources. . . . The program implementing the policy of this chapter is necessary to support the poor and infirm and also to benefit the health, safety, and general welfare of all citizens of the state.").

¹⁰² See *In the Matter of the Application of Puget Sound Power & Light Co. and Wash. Nat. Gas Co.* Docket Nos. UE-951270 *et al.* 14th Supp. Order (Feb. 5, 1997) p.36 ("The public purpose elements of the Stipulation and Joint Applicant's proposal include a \$1 million commitment to low-income programs, ... We applaud these commitments, and commend the Joint Applicants in advance for following through on them."); see also, e.g., Puget Sound Energy, Inc.'s tariff revisions, Docket Nos. UE-041571 *et al.* (effective Oct. 1, 2004), Docket Nos. UE-051305 *et al.* (effective Oct. 1, 2005), Docket Nos. UE-081577 *et al.* (effective Nov. 1, 2008), and Docket Nos. UE-091379 *et al.* (effective Oct. 1, 2009) (each docket demonstrating that low income bill assistance programs are spread across all ratepayers).

¹⁰³ See WUTC Docket Nos. UE-010436, *et al.*, Revised Open Memo Meeting, (April 25, 2001) p.5 ("This rider is designed to collect revenue that will be used to assist low-income customers in a way that is just, fair, reasonable and sufficient. Program effectiveness should be evaluated, in part, based on how broadly funds are distributed among eligible ratepayers: low-income rate assistance programs typically benefit only 25% of eligible customers. Avista and CAAs should explore ways that will enhance program effectiveness and coverage.").

implement the needed repairs will leverage some of the most effective and longest lasting efficiency measures – those installed in the shell of the building. For example, when repair funds are in short supply, as is the present case, typically more expensive repairs such as roof repairs, floor repairs, or electrical work are not performed because they would deplete the available repair funds too rapidly.¹⁰⁴ They are, however, a worthwhile investment because of the size of the savings they will trigger from measures such as ceiling, floor, wall and duct insulation, or structure sealing which might be otherwise stranded.¹⁰⁵

b. PSE's Proposed Low-Income Conservation Programs Are Cost-Effective

41. The Joint Parties provided evidence that the proposed low income conservation programs meet the Commission's standard for cost-effectiveness. PSE's Electric Tariff G, Schedule 83 allows a Total Resource Cost test ("TRC") of 0.667 for low-income conservation programs.¹⁰⁶ The low-income conservation programs proposed in this case have a TRC of 0.94, before consideration of non-quantifiable benefits, and thus meet the cost-effectiveness standard approved by the Commission.¹⁰⁷
42. Commission Staff's claim that the proposed low-income programs are not cost-effective misses the mark for several reasons. First, Commission Staff relies on a Commission order nearly two decades old, which applies a TRC of 1.0, but ignores the cost-effectiveness standard for low-income programs set forth in the filed Schedule 83.¹⁰⁸ Beginning in 2007, the Commission approved a TRC of 0.667 for low-income conservation programs in Schedule 83.¹⁰⁹

¹⁰⁴ See Joint Parties, Exh. No. J-2T 11:1-7.

¹⁰⁵ See Joint Parties, Exh. No. J-2T 10:13 – 11: 7; see also Joint Parties, Exh. No. J-5 at 2-3.

¹⁰⁶ See Joint Parties, Exh. No. J-8 at 6.

¹⁰⁷ See Joint Parties, Exh. No. J-2T 4:14-16 and 4:19 – 5:3; see also Joint Parties, Exh. No. J-4.

¹⁰⁸ See Exh. No. J-8 at 6.

¹⁰⁹ See *id.*

Commission Staff reviewed the tariff in 2007 and 2009 and did not object to the tariff going into effect.¹¹⁰ Any attempts by Commission Staff or other parties to now dismiss the cost-effectiveness standard set forth in PSE's filed tariff should be rejected as contrary to long-established Washington law that a filed tariff has the force and effect of law.¹¹¹

43. Second, Commission Staff misunderstands PSE's calculation of the costs and benefits related to the proposed conservation programs. When the total proposed seven-year program cost of \$16 million¹¹² is divided into two-year periods and combined with PSE's two-year (2010-2011) tariff budget for low income weatherization, the cost for the two-year program is \$9,183,380 (base program cost plus proposed program cost).¹¹³ This two-year program cost is compared to the total two-year projected energy savings of 3,843,398 kWh (base program energy savings plus energy savings from proposed programs), which results in a unit cost/TRC ratio of 0.94.¹¹⁴ This exceeds the Commission-approved standard of 0.667 without taking into account non-quantifiable benefits that are realized by all customers and recognized by the Commission as appropriate considerations.¹¹⁵ Furthermore, even with a TRC ratio of 0.94, the use of the proposed funds over several years will not significantly impact the overall cost-effectiveness of

¹¹⁰ See WUTC Docket Nos. UE-091859, *et al.*, Open Meeting Memo, (Dec. 23, 2009) p.1; *see also* UE-072235, *et al.* Open Meeting Agenda (Dec. 27, 2007) at p.9.

¹¹¹ See *Gen. Tel. Co. of Nw. v. Bothell*, 105 Wn.2d 579, 585, 716 P.2d 879 (1986) ("Once a utility's tariff is filed and approved, it has the force and effect of law.") (citing *Moore v. Pacific Nw. Bell*, 34 Wn. App. 448, 455, 662 P.2d 398 (1983) and *Allen v. Gen. Tel. Co.*, 20 Wn. App. 144, 151, 578 P.2d 1333 (1978)).

¹¹² The \$16 million is 80 percent of the \$20 million total that PSE proposes to use for low income programs.

¹¹³ See Joint Parties, Exh. No. J-2T 4:9-16.

¹¹⁴ See Joint Parties, Exh. No. J-2T 4:14-16; *see also* Joint Parties, Exh. No. J-4.

¹¹⁵ See Joint Parties, Exh. No. J-8 at 3 ("Benefits (or costs) may include, but are not limited to: legislative or regulatory mandates, support for region Market Transformation programs, low income health and safety, low income energy efficiency or experimental or pilot programs. *The Company may use these Non-quantifiable Benefits (or Costs) to demonstrate cost-effectiveness based on the Total Resource Cost Test.*") (emphasis added).

PSE's energy efficiency programs. On an annual basis, the increased expenditure represents a small fraction of PSE's demand-side management program budget.¹¹⁶

44. As the evidence demonstrates, it is appropriate to view the low-income energy efficiency proposal on a programmatic basis rather than viewing the repairs in isolation from the other conservation measures that become available after the repairs are completed. The conservation proposed in this proceeding cannot be realized unless the associated repairs are funded. The funding of the proposed repairs is a prerequisite to the additional conservation. In fact, in RCW 70.164.020 the Legislature has defined "weatherization" broadly to include:

activities that use funds administered by the department for one or more of the following: (a) Energy and resource conservation; (b) energy efficiency improvements; (c) *repairs, indoor air quality improvements, and health and safety improvements*; and (d) client education.¹¹⁷

45. Consistent with this definition, the repairs and conservation are tied to one another, thus lowering the TRC ratio.¹¹⁸ Even so, the TRC for the program as a whole remains well above the 0.667 threshold set forth in PSE's tariff.

46. Commission Staff's witness, Mr. Parvinen, appears to argue that funds for repairs should be disallowed because they have not been included in Schedule 83.¹¹⁹ But that is exactly why PSE proposes to use part of the REC Proceeds for repairs. The majority of homes assessed by the community action agencies require some sort of repair before conservation measures can be taken.¹²⁰ As Mr. Parvinen conceded when questioned at hearing by Chairman Goltz, when PSE's conservation program is viewed as "a whole package . . . there are some specific elements that

¹¹⁶ See Joint Parties, Exh. No. J-1T 14:9-12.

¹¹⁷ Joint Parties, Exh. No. J-1T at 6, citing RCW 70.160.020 (emphasis added).

¹¹⁸ See Joint Parties, Exh. No. J-2T 7:16-21.

¹¹⁹ See Parvinen, Exh. No. MPP-1HCT 13:8-9.

¹²⁰ See Joint Parties, Exh. No. J-2T 8:7-9.

if they stood alone would not be cost effective . . .” yet the Commission has instead looked at the “overall package.”¹²¹

2. Legislation, Commission Precedent and Public Policy Support Low-Income Conservation Efforts

47. The Washington Legislature has declared that weatherization of low-income households will help conserve energy resources in this state and can reduce the need to obtain energy from more costly conventional energy resources.¹²² RCW 70.164.010 points out the benefits weatherization provides to *all* customers, not just the low-income sector.

The Commission has strongly supported low-income conservation. For many years the Commission has recognized the need for and appropriateness of funding low-income programs.¹²³ The Commission has accepted the greater use of utility funds for repairs in recent Avista and PacifiCorp rate case settlements.¹²⁴ In its recent decision in the Avista general rate case, the Commission reiterated the importance of promoting low-income conservation programs:

The Company's low-income conservation achievement during the decoupling pilot is particularly disappointing. As the program's impact on low-income customers remains a key issue, we direct the Company, working in collaboration with the parties, to *explore new approaches to promote low-*

¹²¹ See Parvinen, TR. 196:16-197:2; *see also WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-011570, *et al.*, 12th Supp. Order: Rejecting Tariff Filing; Approving and Adopting Settlement Stipulation Subject to Modifications, Clarifications, and Conditions; Authorizing and Requiring Compliance Filing, App. A, Exh. F (June 20, 2002) ¶ 21 (stating that the energy efficiency budget shall reflect implementation of a cost-effective portfolio of programs.).

¹²² See RCW 70.164.010.

¹²³ See, e.g., *In the Matter of the Application of Puget Sound Power & Light Co. and Wash. Nat. Gas Co.* Docket Nos. UE-951270 *et al.* 14th Supp. Order (Feb. 5, 1997) p.36 (“The public purpose elements of the Stipulation and Joint Applicant’s proposal include a \$1 million commitment to low-income programs, ... We applaud these commitments, and commend the Joint Applicants in advance for following through on them.”).

¹²⁴ See, e.g., *WUTC v. Avista Corp.* Docket Nos. UE-080416, *et al.*, Order 08 (Dec. 29, 2008) and *Pac. Power & Light*, Docket No. UE -082180 (changes to Schedule 114 – Low Income Weatherization Program).

*income conservation, to identify barriers to its development, and to address the issues raised by The Energy Project.*¹²⁵

48. Based on the directives from the Legislature and the Commission discussed above, it is clear that providing conservation to low-income utility customers is an important public policy of this state—a policy that benefits not only the low-income customers who otherwise would not have access to such conservation measures, but also all customers and citizens of the state who benefit from reduced need to obtain energy from more costly conventional energy resources and a reduction in uncollectible accounts. Creative collaboration to remove barriers to low-income conservation is a key objective and serves the state's expressed policy, as does weatherization of low-income homes.

3. PSE's Low-Income Renewables Proposal Should Be Approved By the Commission

49. The significant REC Proceeds at issue in this proceeding are available because PSE strategically and expeditiously acquired renewable resources in its generation portfolio.¹²⁶ Given that the significant funds now available have their origin in renewable energy projects, it is reasonable to allocate a small portion of the REC Proceeds to low-income renewable energy measures such as solar thermal hot water and photovoltaic systems.¹²⁷ This will expand the capacity of the eligible low-income agencies to install and maintain such systems and encourage a greater proliferation of such technology and a skilled support network.¹²⁸

50. Commissions in other jurisdictions have recognized the appropriateness of using proceeds from the sale of RECs to fund renewable energy programs. For example, in 2006,

¹²⁵ *In re Petition of Avista Corp. for an Order Authorizing Implementation of a Natural Gas Decoupling Mechanism and to Record Accounting Entries Associated with the Mechanism*, Docket No. UE-090134, *et al.*, Order 10 (Dec. 22, 2009) ¶ 306 (emphasis added).

¹²⁶ See Joint Parties, Exh. No. J-2T 16:23-17:9.

¹²⁷ See Joint Parties, Exh. No. J-1T 10:7-9.

¹²⁸ See Joint Parties, Exh. No. J-1T 10:4-7.

Portland General Electric (“PGE”) applied to the Oregon Public Utility Commission (“OPUC”) requesting permission to sell RECs and to record proceeds from the REC sales in a property sale deferred account. The OPUC granted PGE's application and included several conditions for the sale of RECs.¹²⁹ What is noteworthy about the OPUC's decision is that the OPUC and its staff took the opportunity to establish principles to govern all REC sales. The OPUC could have simply granted the accounting order for the one REC sale that was at issue in the application. Instead, it set forth specific conditions, including authorizing the utility to use the proceeds towards acquiring additional renewable resources to serve customer needs.¹³⁰

51. PSE's proposal to fund renewable energy for low-income customers is also consistent with the Settlement Terms for Conservation in PSE's 2001 general rate case, which terms were accepted by Commission Staff, ICNU, and Public Counsel, among others.¹³¹ The terms commemorate that all signatories understand, agree and support that: “PSE shall initiate work with the Advisory Committee and renewable energy stakeholders to design, establish and begin implementation of at least one renewable energy program that supports the local installation of

¹²⁹ See Joint Parties, Exh. No. J-16. These conditions included: the amount of RECs that could be sold and over what time period; ensuring that the RECs were not “double counted” or sold in such a way that they would later serve PGE’s voluntary green power program; directing certain analysis in subsequent IRPs; requiring PGE to use the Western Renewable Energy Generation Information System (WREGIS); and certain notification provisions.

¹³⁰ In addition to the nine conditions it adopted for the sale of RECs, the OPUC also included a condition about communicating with customers about the REC sales and allowing the proceeds to be used to acquire additional renewable resources. Specifically, this condition provides:

Portland General Electric will clearly communicate to customers that the Tradable Renewable Energy Credits from renewable resources meeting customers’ energy needs may be sold, that the renewable energy attributes have been sold when the company sells Tradable Renewable Energy Credits, that such sales may result in lower customer electric bills and/or acquisition of additional renewable resources, . . .

Joint Parties, Exh. No. J-16 at 2.

¹³¹ *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-011570, *et al.*, 12th Supp. Order: Rejecting Tariff Filing; Approving and Adopting Settlement Stipulation Subject to Modifications, Clarifications, and Conditions; Authorizing and Requiring Compliance Filing, App. A (June 20, 2002) pp.7–8.

renewable energy resources.”¹³² The low-income renewable energy programs proposed in this proceeding are exactly the type of small-scale, local renewable resources installations contemplated in the settlement stipulation.

52. Further, experience has demonstrated that early acquisition of renewable energy resources can have significant value.¹³³ The low-income agencies have been leaders in demonstrating the benefits of emerging energy efficiency technologies (such as dense pack insulation, fan door diagnostics, ductwork, and compact fluorescent light bulbs), which were then successfully expanded to the larger population.¹³⁴ Allocating a small portion of the REC Proceeds towards low-income renewable projects will provide the agencies with an opportunity to gain expertise in installing and maintaining these systems. Finally, while the cost of solar technologies will continue to decline and tax credits and incentives will continue to be available, the fact remains that the cost of these technologies is still prohibitive for low-income communities.¹³⁵ A key benefit of the program that PSE proposes is to expand distributed generation technologies in PSE’s territory while serving a community that otherwise would not be able to benefit directly from renewable resources.¹³⁶

4. PSE and Commission Procedures Exist to Ensure Proper Oversight of Funds

a. New Funds Received for Energy Efficiency and Repairs Would Be Administered as Part of PSE’s Existing Weatherization Program

53. PSE would not need to develop a new and separate program to administer these funds. The proposed low-income weatherization program would be conducted in conjunction with the

¹³² *Id.* at Exh. F ¶ 31.

¹³³ *See* Gravatt, TR. 102:24 – 103:8.

¹³⁴ *See* Eberdt, TR. 104:4 – 105:19.

¹³⁵ *See* Gravatt, TR. 101:25 – 102:9.

¹³⁶ *See* Eberdt, TR. 98:10 – 14.

existing PSE Low-Income Weatherization Program, which already tracks and makes payment for work according to funding source.¹³⁷ Accountability mechanisms are already in place for the low-income weatherization program, which is conducted in accordance with state policies and procedures.¹³⁸ The low-income agencies inspect 100 percent of the work completed and report to PSE on a monthly basis regarding measures installed and completed.¹³⁹ These agencies also receive funds for energy efficiency through the American Recovery and Reinvestment Act of 2009, and accountability and inspection are critical components of those grants.¹⁴⁰

b. Funding for Low-Income Renewable Projects Would Be Designed to Ensure Accountability

54. Implementation details for the renewable component of PSE's proposal is a work in progress, pending approval by the Commission in this proceeding. The Joint Parties have proposed an initial outline and structure for the program that ensures the funds are administered responsibly.

55. First, the program would be implemented in a similar fashion to PSE's existing program that funds small scale renewable projects in education facilities.¹⁴¹ This program is part of PSE's electric energy efficiency program, under Tariff Schedule 248.¹⁴² Second, PSE would convene an advisory group including representatives of the low-income agencies that administer its weatherization program and other interested stakeholders to create the detailed structure of the program.¹⁴³

¹³⁷ See Joint Parties, Exh. No. J-1T 19:16 – 20.

¹³⁸ See Sieg, TR. 87:21-22.

¹³⁹ See Sieg, TR. 87:22-25 and Eberdt, TR. 88:11-14.

¹⁴⁰ See Eberdt, TR. 88:14-19.

¹⁴¹ See Joint Parties, Exh. No. J-1T 20:3 – 9.

¹⁴² See Joint Parties, Exh. No. J-1T 20: 4 – 7; *see also* Gravatt, TR. 91:7-15.

¹⁴³ See Joint Parties, Exh. No. J-1T 20:9 – 12; *see also* Sieg, TR. 66:10 – 14.

56. Third, PSE in consultation with its advisory group, would implement selection criteria to determine which renewable projects would be funded.¹⁴⁴ These criteria would be similar to protocols already in place for grants made to the school-based small scale renewable projects.

PSE evaluates proposals for that program based on five key selection criteria:¹⁴⁵

- (1) On-site maximization of energy efficiency. Any building selected to receive a grant needs to demonstrate that it has maximized energy efficiency measures before installation of a renewable facility.
- (2) Geographic diversity. Ensure projects are distributed throughout the service territory.
- (3) Cultural community diversity. Consider the community served at the project location.
- (4) Demonstration of qualified management. The recipient of the grant must demonstrate that qualified management is in place for the long run operation and maintenance of the project.
- (5) Project characteristics, including size and technology, ensuring the proposed renewable project is well designed and located to maximize the natural resources.

Other considerations in determining funding a specific project could be economic development, job creation, and environmental benefits.¹⁴⁶ Again, PSE and its advisory group would formalize selection criteria for the low income renewables program and consider together which projects should be considered eligible for funding.

57. Fourth, similar to what the Company does in its low-income energy efficiency programs, PSE would develop contractual agreements with potential recipients of funding for renewable projects to ensure low-income families (rather than other property owners) receive the program

¹⁴⁴ See Sieg, TR. 66:10-17.

¹⁴⁵ See Joint Parties, Exh. No. J-1T 20:15-26; *see also* Sieg, TR. 66:10-14 and Gravatt, TR. 91:9-19.

¹⁴⁶ See Jones and Sieg, TR. 83:11 – 19.

benefits.¹⁴⁷ Fifth, PSE would evaluate the low-income renewables program after a few years to ensure the installed systems were maintained and operated as expected, and the expected kilowatt-hours were produced.¹⁴⁸

58. Sixth, PSE and its advisory group would look to analogous programs around the region when defining the structure of the renewable program. These include California's robust initiatives funding solar photovoltaic systems on low-income households (both multi family and single family residences), as well as Northwestern Energy's small scale renewable program funded by its Universal System Benefits (USB) fund.¹⁴⁹

59. Finally, PSE has commenced drafting Schedule 247, a stand-alone tariff schedule that would administer the program.¹⁵⁰ If use of REC Proceeds is approved for investment in low-income renewable projects, the Commission would have the opportunity to approve, modify or reject that proposed tariff after it is filed.

5. PSE Will Explore Opportunities to Leverage Additional Funds for Low-Income Renewable Projects

60. PSE and its advisory group can also examine federal and state opportunities to leverage additional funds for and benefits from the proposed low-income renewable program. There may be some federal funds that could be packaged with these dollars going forward.¹⁵¹ In addition, Washington State offers a cost recovery incentive mechanism that applies to customer-generated electricity from solar, wind or anaerobic digester power.¹⁵² Customer-generators are eligible for

¹⁴⁷ See Sieg, TR. 67:180 – 68:9.

¹⁴⁸ See Gravatt, TR. 91:7-19.

¹⁴⁹ See Joint Parties, Exh. No. J-1T at 11-12, Gravatt, TR. 71:4-14.

¹⁵⁰ See Englert, TR. 84:4-10.

¹⁵¹ See Eberdt, TR. 89:9-13.

¹⁵² See RCW 82.16.110 (2) and (6).

a base incentive of 15 cents per kilowatt-hour up to \$5,000 per year.¹⁵³ The incentive is available until June 30, 2020.¹⁵⁴

61. Under the cost recovery incentive law, the customer-generator owns the RECs produced by its system.¹⁵⁵ Alternatively, PSE could retain those RECs and count them towards the renewable resource requirement at double their electrical output.¹⁵⁶

6. Public Counsel's Assertion that PSE Customers Pay Too Much for the Wind Projects Generating the RECs Is Unfounded

62. The Commission should disregard testimony from Public Counsel witness Scott Norwood that customers should receive 100 percent of the REC revenues because PSE's three wind projects are significantly more expensive than the "forecasted average price of energy" over the same time period.¹⁵⁷ This is not a relevant or accurate comparison. In fact, PSE's wind projects have been shown to be among the most cost-effective resources available to the Company. At the time PSE invested in these projects, the Company was resource-deficient and projected a significant need for new resources to meet load growth and replace expiring contracts. The cost of energy from each of these wind projects was shown to be the least cost and least risk resource, compared to other new resources even without consideration of the REC Proceeds. Further, the cost of energy is not the only relevant factor in the decision to invest in a resource. Price stability, hedge against fossil fuel prices, anticipation of future policy such as renewable portfolio standards and climate regulation are all factors that should be considered in a comparison of resources. PSE rightly engaged in that analysis in its decision to acquire the wind

¹⁵³ See RCW 82.16.120 (5).

¹⁵⁴ See RCW 82.16.120 (1).

¹⁵⁵ See RCW 82.16.120 (8).

¹⁵⁶ See WAC 480-109-020; RCW 19.285.040(2)(b). A qualifying utility may count distributed generation at double the facility's electrical output if the utility: (i) Owns or has contracted for the distributed generation and the associated renewable energy credits; or (ii) has contracted to purchase the associated renewable energy credits.

¹⁵⁷ Norwood, Exh. No. SN-1HCT 10:6-19.

projects.¹⁵⁸

IV. CUSTOMER CREDITING MECHANISM

63. PSE proposes that all other REC Proceeds be credited to customers in the form of an offset against a regulatory asset, which would be removed from general rate recovery.¹⁵⁹ Although customers will receive the same benefit whether it is provided as a direct credit or an offset to a regulatory asset, a direct credit may be less desirable because it would create rate volatility as rates increase once the credit has been passed back.¹⁶⁰ PSE nonetheless recognizes that there are other reasonable approaches to allocating these credits to customers, as suggested by the parties to this case. In particular, PSE is not opposed to using a tracker mechanism similar to the PTC tracker to flow back to customers the proceeds from the sale of RECs.¹⁶¹

V. REPORTING AND ACCOUNTING

A. Public Counsel's Proposed Reporting Requirements Are Unnecessary and Duplicative

64. There is no need for a specific REC reporting requirement, as Public Counsel requests. Whatever mechanism the Commission selects to credit the REC Proceeds to customers will require annual compliance or tariff filings. These filings will provide all the information necessary, rendering a separate REC reporting obligation superfluous.¹⁶² Moreover, although Public Counsel initially couched its request for REC reporting with vague allegations of questions about PSE's treatment of RECs, when pushed on this point Public Counsel did not articulate any actual issues with PSE's treatment of RECs other than the fact that PSE filed this

¹⁵⁸ See Joint Parties, Exh. No. J-2T 17:1 – 18:12.

¹⁵⁹ See Amended Petition at ¶¶ 20–21; De Boer, Exh. No. TAD-1T 9:5 – 10:7.

¹⁶⁰ See De Boer, Exh. No. TAD-1T 10:3–7.

¹⁶¹ See De Boer, TR. 110:14–17.

¹⁶² See De Boer, Exh. No. TAD-3HCT 20:9–12.

petition seeking Commission approval of the disposition of REC Proceeds.¹⁶³ In fact, PSE itself raised the issue of REC revenues as far back as 2005¹⁶⁴ and specifically in April 2007 when it filed the original accounting petition in this docket seeking a Commission determination of the proper regulatory treatment of REC revenues. Further, Public Counsel's suggestion that a reporting requirement similar to that agreed upon in the recent settlement of the PacifiCorp general rate case is needed makes little sense, given that PSE operates in only one jurisdiction and the primary reason for the PacifiCorp reporting requirement was to address concerns relating to the multiple jurisdictions in which PacifiCorp operates.¹⁶⁵

B. The Proposed Accounting Treatment Is Appropriate

65. No party has contested the accounting treatment proposed in PSE's Amended Petition.¹⁶⁶ The Commission should therefore adopt the proposed accounting treatment.

VI. CONCLUSION

66. For the reasons set forth above and in the Amended Petition and evidence that is before the Commission, PSE respectfully requests that the Commission issue an order approving its requested relief.

¹⁶³ See De Boer, Exh. No. TAD-3HCT 20:4-6, 20:15-18.

¹⁶⁴ See De Boer, Exh. No. 3HCT 21:3-7 (citing *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-050870, Markell, Exh. No. EMM-1HCT 25:6-14).

¹⁶⁵ See De Boer, Exh. No. TAD-3HCT 21:8-13.

¹⁶⁶ See Amended Petition at ¶ 23.

DATED this 17th day of March, 2010.

Respectfully submitted

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THE FOLLOWING PARTIES JOIN IN SECTION III.B OF PSE'S BRIEF

DATED this 17th day of March, 2010.

Respectfully submitted

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