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Amended Petition of)	
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)	
PUGET SOUND ENERGY, INC.)	
)	Docket No. UE-070725
)	
For an Order Authorizing the Use of the)	
Proceeds From the Sale of Renewable)	
Energy Credits and Carbon Financial)	
Instruments)	
)	

REDACTED VERSION

March 17, 2010

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
II. ARGUMENT	4
A. Sound Ratemaking Theory Requires that Ratepayers Receive the Full Benefit of the REC Revenues	4
1. The Fundamental Principle in Washington: Revenues Offset Costs	4
2. PSE Is Not Entitled to Double Recovery	6
3. PSE Does Not Need to Be Incented to Fulfill its Pre- Existing Legal Obligations.....	7
4. REC Proceeds in Other States Are Treated as Offsetting Revenues Benefitting Customers	8
B. All REC Sales Prices Are Within Broad Market Ranges and Are Not Related to the California Receivable Settlement	9
1. The Facts Do Not Support the [REDACTED]	10
2. Empirical Evidence Demonstrates [REDACTED]	11
3. California RPS Requirements, Not PSE Settlement Tactics, Are Responsible for Favorable REC Sales Prices.....	12
4. Publicly Available Information Refutes PSE's Entitlement Claims	16
C. REC Proceeds and Shareholder Debt Are Unrelated and REC Revenue Should Not Be Applied to Mitigate Shareholder Losses	20
1. PSE's Position is Self-Contradictory and Unreliable	20
2. PSE's Petition Rests on Flawed Logic	21

3.	PSE Assumed the Risk of the California Receivable	22
D.	PSE’s Proposed Revenue Distribution Unduly Harms Ratepayers.....	24
1.	The Commission Should Not Provide PSE Shareholders or the Low Income Programs Any Revenues More Quickly Than Ratepayers.....	25
2.	All REC Revenues Should Be Immediately Returned as Rate Credit and Not Used to Reduce Regulatory Assets	25
E.	Low Income Program Allocation is Best Determined in a General Rate Case	27
III.	CONCLUSION	30

TABLE OF AUTHORITIES

Cases and Orders

<u>DPUC Review of Long-Term Renewable Contracts – Round 3 Results</u> , Docket No. 08-03-03 (Connecticut Dept. of Pub. Util. Control Apr. 8, 2009).....	9
<u>Jewell v. WUTC</u> , 90 Wn.2d 775 (1978).....	7
<u>POWER v. WUTC</u> , 104 Wn.2d 798 (1985)	6, 7
<u>Re Application of Avista</u> , Docket No. UE-991255, Final Order at ¶ 96 (Mar. 6, 2000)	8
<u>Re Application of Mid-Kansas Electric Company</u> , Docket No. 09-MKEE- 969-RTS, Order Approving Unanimous Stipulation and Agreement, Stipulation and Agreement (Kansas Corp. Comm’n Jan. 11, 2010)	9
<u>Re Application of PSE</u> , Docket No. UE-960195, Fourteenth Suppl. Order (Feb. 5, 1997)	23
<u>Re Petition of PacifiCorp</u> , Docket UE-020417, Sixth Suppl. Order (July 15, 2003).....	5
<u>WUTC v. PacifiCorp</u> , Docket No. UE-050684, Final Order (Apr. 17, 2006).....	5
<u>WUTC v. PacifiCorp</u> , Docket No. UE-080220, Final Order (Oct. 8, 2008)	28
<u>WUTC v. PacifiCorp</u> , Docket No. UE-090205, Final Order (Dec. 16, 2009).....	28
<u>WUTC v. PSE</u> , Docket No. UE-060266, Final Order (Jan. 5, 2007).....	28
<u>WUTC v. PSE</u> , Docket No. UE-072300, Final Order (Oct. 8, 2008)	28
<u>WUTC v. Rainier View Water Company, Inc.</u> , Docket No. UW-010877, Sixth Suppl. Order (July 12, 2002)	4, 5

Statutes

RCW § 19.285.....	1
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Other Authorities

1 Leonard S. Goodman, *The Process of Ratemaking* 270 (1998)..... 5, 27

I. INTRODUCTION

1 The Industrial Customers of Northwest Utilities (“ICNU”) submits this Brief in Washington Utilities and Transportation Commission (“WUTC” or the “Commission”) Docket No. UE-070725, requesting that the Commission reject Puget Sound Energy’s (“PSE” or the “Company”) proposed allocation of net revenue resulting from the sale of renewable energy credits (“RECs”) and other carbon financial instruments (“CFIs”)(“REC Revenues”). Instead, the Commission should order the Company to use the REC Revenues to establish a rate credit applicable to all customers who purchase electricity from the Company.

2 PSE has been selling RECs to various entities since [REDACTED],^{1/} and CFIs since [REDACTED].^{2/} While future RECs may be used to comply with the Washington Renewable Portfolio Standard (“RPS”), PSE cannot bank its past and presently acquired RECs or CFIs for later compliance, when the RPS becomes effective in 2012.^{3/} Consequently, the Company is selling RECs and CFIs to entities that need them.

3 The total net revenue from PSE’s REC and CFI sales is expected to be about [REDACTED] through August 2015.^{4/} In 2007, PSE petitioned the Commission for authority to defer REC and CFI sale proceeds,^{5/} and the Company later filed an amended petition proposing to allocate REC Revenues: 1) to its shareholders through

^{1/} Schoenbeck, Exh. No. DWS-3HC.

^{2/} Schoenbeck, Exh. No. DWS-4C.

^{3/} RCW § 19.285.

^{4/} Schoenbeck, Exh. No. DWS-1HCT at 2:3-4.

^{5/} Re Petition of PSE, Docket No. UE-070725, Petition for an Order (Apr. 13, 2007).

retirement of a receivable related to power sales dating back to 2000 and 2001 (“California Receivable”); 2) to fund low income programs; and 3) to reduce regulatory assets.^{6/} The California Receivable is unrelated to the generating resources producing RECs and CFIs.

4 ICNU has submitted testimony explaining the flaws in PSE’s proposed allocation of the REC Revenues. All of the REC Revenues should flow back to customers because there is no demonstrable connection between REC and CFI sale proceeds and the Company’s California Receivable. PSE assumed its obligations under the California Receivable when the Company was responsible for all costs and benefits associated with net power costs, and PSE has no legitimate claim to siphon ratepayer money to pay for shareholder costs.

5 [REDACTED] is contradicted by both the publicly available and confidential evidence in this proceeding. PSE presents scant evidence to support its claim, which is almost entirely made up of the written and oral testimony of its witness and is not supported by any contemporaneous documentation. The evidence demonstrates that the REC Revenues are the result of normal market transactions between PSE and various utilities that have urgent needs to meet their imminent obligations under state mandated RPSs. In addition, PSE’s position is also directly contradicted by the California investor owned utilities’ statements that the transactions should be

^{6/} De Boer, Exh. No. TAD-1T at 4:9 – 5:4.

evaluated as independent market transactions for the purchase of renewable energy, irrespective of the Settlement Agreement and with prices fully consistent with comparable transactions.^{7/}

6 Likewise, although ICNU routinely supports or does not oppose low income assistance programs, this proceeding is not the proper forum to earmark revenues for low income assistance. Such allocations need to be considered in light of all relevant factors in a general rate case.

7 Finally, the REC Revenues should be used to pay a rate credit, rather than reduce regulatory assets as proposed by PSE and Staff. There is no reason current ratepayers should not receive the full value of the REC Revenues as quickly as possible, especially in light of the current poor economic conditions and the possibility that PSE's overall rates may increase as a result of the Company's currently filed general rate case.

8 Commission Staff also takes the position that the Company's proposed allocation to shareholders and low-income programs should be rejected.^{8/} Additionally, Public Counsel and The Kroger Co. have submitted testimony opposing aspects of PSE's proposed revenue allocation.^{9/} Conversely, the NW Energy Coalition, Renewable Northwest Project, and The Energy Project (collectively, the

^{7/} Schoenbeck, Exh. No. DWS-8 (emphasis added).

^{8/} Parvinen, Exh. No. MPP-1THC at 10:21-22.

^{9/} Norwood, Exh. No. SN-1HCT; Higgins, Exh. No. KCH-1T.

“Joint Parties”) at least partially support PSE and have submitted joint testimony in conjunction with PSE to allocate revenue to low-income programs.^{10/}

II. ARGUMENT

A. Sound Ratemaking Theory Requires that Ratepayers Receive the Full Benefit of the REC Revenues

The REC Revenues should be returned to the customers that paid for the costs of the renewable resources that generated the RECs. This result is supported by Commission precedent, Washington Supreme Court holdings, and established ratemaking principles. Utilities like PSE must offset investment costs with revenues generated by rate base investments, and utilities are only allowed the opportunity to recover their investment costs plus an authorized rate of return. Further incentives and double investment recovery should not be permitted. In other jurisdictions, REC revenue is fully applied to benefit ratepayers, and there is no reason why the WUTC should depart from sound ratemaking theory in this proceeding.

1. The Fundamental Principle in Washington: Revenues Offset Costs

9 Proper adjustment to offset revenues against costs is not an academic or discretionary issue. Utility proposals which prevent immediate revenue offset are “not consistent with sound ratemaking theory.”^{11/} Hence, this case ultimately concerns a *foundational* question of ratemaking theory. PSE is asking the Commission to approve an unsound request that would prevent simple and

^{10/} Englert, et al., Exh. Nos. JOINT-1T and JOINT-2T.

^{11/} WUTC v. Rainier View Water Company, Inc., Docket No. UW-010877, Sixth Suppl. Order at ¶ 44 (July 12, 2002).

straightforward application of revenue to offset cost. ICNU urges the Commission to reject this invitation, as the WUTC has faithfully done in similar rate matters.

10 The controlling principle in allocating REC and CFI proceeds is that power revenues must be applied to offset power costs. Standard ratemaking theory requires that if base load investment “is included in rate base, then revenues that would be generated *by that investment* should also be taken into account.”^{12/} Moreover, as the Commission explains, “we have previously identified the following considerations for the recovery of *deferred power costs* in rates,” including the requirement that a “company *must* . . . offset increased costs with increased revenues”^{13/} The fundamental offset principle should be applied in this deferral case because it necessarily implicates consideration of both cost and revenue.

11 Rates cannot be fair, just and reasonable unless the proper relationship between costs and revenues is established. Adjustments affecting rates are “to best estimate the relationship between the Company’s costs and revenues and *thus* establish rates that are fair, just, and reasonable and allow the Company the opportunity to earn a fair rate of return.”^{14/} The inseparable correlation between cost/revenue balance and rate fairness is plain—cost/revenue offsets “thus” establish fair rates. In other words, rate adjustments must *first* be made to balance the

^{12/} 1 Leonard S. Goodman, *The Process of Ratemaking* 270 (1998) (emphasis added).
^{13/} WUTC v. PacifiCorp, Docket No. UE-050684, Final Order at ¶ 309 (Apr. 17, 2006) (*citing Re Petition of PacifiCorp*, Docket UE-020417, Sixth Suppl. Order at ¶¶ 25-33 (July 15, 2003)) (emphasis added).

^{14/} WUTC v. Rainier View Water Company, Inc., Docket No. UW-010877, Sixth Suppl. Order at ¶ 29 (emphasis added).

relationship between costs and revenues *before* rate establishment can be considered fair, just and reasonable. Just rates are a direct consequence of cost/revenue balance.

12 This foundational principle applies to gas and electric utilities.^{15/} The Commission recently explained that the rule “means that once an event is determined to be known and measurable, it can then be used to best estimate the relationship between revenues and costs.”^{16/} The application of that rule to this case is straightforward—REC and CFI sale transactions provide known and measurable indices of sale proceeds. Moreover, the Commission uses “revenues” and “offsetting factors” as synonymous terms in relationship to costs.^{17/}

13 In sum, REC and CFI revenue should presently be applied to offset costs of the renewable resources responsible for the proceeds. The costs of renewable generating resources which produce RECs and CFIs should be allocated across customer classes according to PSE’s cost-of-service study.^{18/}

2. PSE Is Not Entitled to Double Recovery

14 The matter of authorized utility return on investment is also governed by established precedent. The Supreme Court of Washington applies the standard equation of $R = O + B(r)$.^{19/} The Court explains that R is the utility’s allowed revenue requirement and “the B term is the ‘rate base’ which represents *the total investment in*, or fair value of, the facilities of the utility employed in providing its service.

^{15/} WUTC v. Avista, Docket Nos. UE-090134, et al., Final Order at ¶ 74 (Dec. 22, 2009).

^{16/} Id.

^{17/} Compare id. at ¶ 74, with id. at ¶ 47.

^{18/} Schoenbeck, Exh. No. DWS-1HCT at 11:13 – 12:1.

^{19/} POWER v. WUTC, 104 Wn.2d 798, 809 (1985).

Calculation of the rate base is of obvious importance since the product of the rate base (B) *multiplied by* the allowed rate of return (r) accrues to the utility's investors."^{20/} In short, utility investors are legally entitled to an opportunity to recover their "total investment" plus a return on that investment.

15 PSE's proposed allocation of REC and CFI proceeds goes still farther in impermissibly earmarking a double recovery to the Company. While PSE shareholders already accrue back their total investment plus earn a rate of return on renewable generating resources, the Company proposes to grant shareholders another \$21 million in shareholder profit.^{21/} These amounts are net revenues not tied to any costs. Such double recovery is strictly forbidden. As the Supreme Court states, "the *r* term is the rate of return that the utility is *allowed to earn* on its investment."^{22/} The proposed allotment of REC and CFI revenue is impermissible, since the Company's proposed allocation to shareholders exceeds, and is in addition to, the "allowed" rate of return.

3. PSE Does Not Need to Be Incited to Fulfill its Pre-Existing Legal Obligations

16 PSE's contention that the Company must be incited or "rewarded" to broker good REC sales is unpersuasive.^{23/} As an initial matter, utilities such as PSE are granted a monopoly in exchange for extensive regulation, to ensure that the public

^{20/} Id. at 809-10 (emphasis added).

^{21/} De Boer, Exh. No. TAD-1T at 4:20 – 5:2.

^{22/} POWER, 104 Wn.2d at 810 (second emphasis added).

^{23/} De Boer, Confidential TR. 188: 16 – 189: 8

interest is protected.^{24/} In other words, PSE is positively required to protect ratepayer interests—e.g., the Company is already obligated to make all of its sales (including REC sales) at prices favorable to the public interest.^{25/} The Company is not entitled to, or in need of, further “incentives” beyond its allowed rate of return on top of rate base investment recovery. To argue otherwise is contrary to fundamental ratemaking principles, and would encourage utilities to request incentives on a wide variety of other transactions, including wholesale power sales, and equipment and land sales.

17 Moreover, practically speaking, when the Commission adopts incentive mechanisms, the institution of such mechanisms normally occurs *before* the utility action being incited, not as an extra prize awarded after the fact.^{26/} Establishment of incentive mechanisms should be the fruit of a public and deliberative process instituted before any “incentives” are doled out. Allocating REC proceeds to PSE shareholders—as a post hoc encouragement for PSE to fulfill its pre-existing legal duty—would send the wrong message.

4. REC Proceeds in Other States Are Treated as Offsetting Revenues Benefitting Customers

18 When the question of REC revenue allocation has arisen before other utility regulatory commissions, customers have been awarded the full benefit of all such proceeds. As established by uncontroverted testimony in this case,^{27/} PacifiCorp

^{24/} Jewell v. WUTC, 90 Wn.2d 775, 776 (1978).

^{25/} E.g., Re Application of Avista, Docket No. UE-991255, Final Order at ¶ 96 (Mar. 6, 2000)

^{26/} Parvinen, TR. 203:25 – 204:4.

^{27/} Englert, et al., TR. 60:14-22.

ratepayers in Utah and Wyoming receive 100% of the benefit of REC sales.^{28/}

Likewise, Portland General Electric Company directly returns all REC revenue back to Oregon customers through a property sales account.^{29/}

19 In similar fashion, the Kansas Corporation Commission approved a settlement in which “the revenue received, if any, from the sale of Renewable Energy Credits (RECs) shall be credited *as an offset* to the” Energy Cost Adjustment Tariff used in Kansas.^{30/} The Connecticut Department of Public Utility Control “believes that the best option, to ensure that ratepayers receive the benefits of the RECs,” is to transfer 100% of the RECs in a fashion that benefits ratepayers.”^{31/} Neither PSE nor the Joint Parties have identified any investor owned utility, which has not either banked its RECs or used the actual or forecasted benefits of REC sales to lower rates. Across the county, utility regulatory agencies consistently apply REC proceeds to maximize customer benefit through cost/revenue offsets.

B. All REC Sales Prices Are Within Broad Market Ranges and Are Not Related to the California Receivable Settlement

20 The record amply demonstrates that all the REC Revenues currently at issue are the result of normal market transactions. This is proven by empirical market pricing and bids, and through publicly available information establishing the independent relationship of REC sales and the California Receivable settlement

^{28/} Higgins, Exh. No. KCH-1T at 6:8-11.

^{29/} Englert, et al., Exh. No. J-16 at 8-9.

^{30/} Re Application of Mid-Kansas Electric Company, Docket No. 09-MKEE-969-RTS, Order Approving Unanimous Stipulation and Agreement, Stipulation and Agreement at 6 (Kansas Corp. Comm’n Jan. 11, 2010) (emphasis added).

^{31/} DPUC Review of Long-Term Renewable Contracts – Round 3 Results, Docket No. 08-03-03 at 17 (Connecticut Dept. of Pub. Util. Control Apr. 8, 2009).

litigation. There is no reliable evidence that demonstrates that [REDACTED]
[REDACTED].

Consequently, there is no equitable justification for awarding Company shareholders a portion of REC Revenues.

1. The Facts Do Not Support the [REDACTED]

21 PSE contends that its shareholders are entitled to a portion of the REC Revenues based on the claim that, *but for* the Company's ability to negotiate a settlement of the California Receivable litigation, REC sales and prices would never have occurred at all.^{32/} Likewise, PSE claims that [REDACTED]
[REDACTED]
[REDACTED].^{33/} PSE cannot prove such claims, nor are the risk factors associated with the California Receivable related to the generating assets responsible for REC sales.

22 The only real "evidence" that the Company submits to show the purported value of [REDACTED] is Mr. De Boer's testimony. When asked by ICNU to supply documentary proof supporting its settlement leveraging claims, PSE admitted that there were no contemporaneous documents that supported its claim.^{34/} Ironically, the best documentary evidence that PSE has been able to muster—[REDACTED]
[REDACTED]^{35/}—fully justifies a

^{32/} De Boer, Exh. No. TAD-1T at 7:19 – 8:3.

^{33/} De Boer, Exh. No. TAD-3HCT at 7:9-11; accord De Boer, Confidential TR. 122:10-13.

^{34/} De Boer, Exh. No. TAD-13; accord De Boer, Confidential TR. 128:9-13.

^{35/} De Boer, Exh. No. TAD-3HCT at 8:1 – 10:19.

rejection of its proposed revenue allocation to shareholders. The [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

2. Empirical Evidence Demonstrates [REDACTED]

23 Empirical evidence demonstrates that [REDACTED]

[REDACTED]. Mr. De Boer acknowledges that “[REDACTED]

[REDACTED].”^{36/} Mr. De Boer also draws

a sharp distinction between: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]”^{37/}, [REDACTED]

[REDACTED]

[REDACTED] the REC prices ranged between [REDACTED] and

[REDACTED].”^{38/} In other words, the sample variance in market pricing ranged at

least as much as [REDACTED], or [REDACTED].

24 This demonstrably wide range of sample market pricing variance shows

that the [REDACTED], allegedly [REDACTED]

[REDACTED], are comfortably within normal market ranges. The

difference between the highest price [REDACTED],

^{36/} Id. at 18:14.

^{37/} Id. at 8:4-5.

^{38/} Id. at 8:5-8.

[REDACTED] and the highest REC price that PSE [REDACTED], [REDACTED], is only [REDACTED]—i.e., *less than* the [REDACTED] range which exists among prices that [REDACTED].

25 On cross examination, Mr. De Boer identified purported “evidence” on the market price for RECs, listing prices within the [REDACTED] range.^{39/} However, Mr. De Boer’s cross statements are contradicted by PSE’s previously filed Rebuttal Testimony identifying [REDACTED] at prices in the [REDACTED] range, which were wholly distinguished from alleged [REDACTED] [REDACTED]^{40/} In fact, Mr. De Boer later testified at the hearing, in response to a Commissioner question [REDACTED] [REDACTED] [REDACTED]^{41/} Quite apparently, Mr. De Boer’s statements are too contradictory and uncertain to establish what [REDACTED], and they even support [REDACTED] [REDACTED].

3. California RPS Requirements, Not PSE Settlement Tactics, Are Responsible for Favorable REC Sales Prices

26 Just how substantial a measure of time and chance was involved in REC values is apparent when considering the urgent REC needs of California utilities. As a cross-examination exhibit, ICNU submitted the March 2010 California RPS

^{39/} De Boer, Confidential TR. 125:24 – 126:13.

^{40/} De Boer, Exh. No. TAD-3HCT at 8:4-8 (emphasis added).

^{41/} De Boer, Confidential TR. 179:23 – 180:12 (emphasis added).

Compliance Report of SCE, filed with the California Public Utilities Commission (“CPUC”). A full two-thirds of this report is devoted to explaining SCE’s “Barriers to Future RPS Compliance.”^{42/} Moreover, even Mr. De Boer freely admits that [REDACTED]

[REDACTED]^{43/} Indeed, on cross examination, when responding to the Commissioner question [REDACTED]

[REDACTED]^{44/} Mr. De Boer answered: [REDACTED]

[REDACTED]^{45/} The exacting demands of the California RPS, with difficult to achieve and graduated 20% and 33% renewable energy goals,^{46/} is the real force behind the Company’s successfully consummated REC sales at respectable market prices.

27 As a case in point, the Company’s REC contract with PG&E is perfectly illustrative of how the California RPS requirement, and not PSE ingenuity, is ultimately responsible for REC pricing. On December 11, 2008, PSE claims it made a simple offer to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]^{47/} One week later, on December 18, 2008, SCE was

^{42/} De Boer, Exh. No. TAD-26 at 4-9.

^{43/} De Boer, Confidential TR. 164:22-23 (emphasis added).

^{44/} Id. at 179:23-24.

^{45/} Id. at 180:3-4.

^{46/} De Boer, Exh. No. TAD-26 at 4.

^{47/} De Boer, Exh. No. TAD-12HC at 3-4; accord De Boer, Confidential TR. 124:20-25, 173:14-22, 177:17-20.

selected by PSE as the highest bidder for 2,000 gigawatt hours (“GWh”) of energy,^{48/} or 2 million RECs. SCE then filed for approval of the associated REC sale contract with the CPUC on February 9, 2009,^{49/} at the sales price of [REDACTED]
[REDACTED]^{50/}

28 By February 2009, therefore, [REDACTED].
SCE had successfully bid for all 2 million RECs offered by PSE, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]^{51/} Thus, at this point, even assuming that PSE ingenuity and settlement [REDACTED] *had* secured the sale of 2 million RECs to SCE at the price of [REDACTED], the Company could plainly not hope to exert further settlement [REDACTED] against PG&E.

29 In this light, the subsequent sale of 1 million RECs to PG&E, at a price *exceeding* the allegedly [REDACTED] rate of [REDACTED] to SCE, is completely inexplicable under PSE’s [REDACTED] theory. Nevertheless, on [REDACTED]
[REDACTED] after SCE’s REC advice filing with the CPUC, [REDACTED]
[REDACTED]
[REDACTED]

^{48/} Schoenbeck, Exh. No. DWS-7 at 2, 4.

^{49/} Id. at 2.

^{50/} Schoenbeck, Exh. No. DWS-1HCT at 5:1.

^{51/} De Boer, Exh. No. TAD-12HC at 4.

[REDACTED]^{52/} This [REDACTED] would be nothing short of madness, especially in consideration of the [REDACTED] price eventually agreed to between the parties,^{53/} if the primary factor at play was [REDACTED]
[REDACTED].

30 Conversely, if [REDACTED] can be ascribed to desperate California utility need, to meet the exacting and graduated California RPS goals, then this otherwise illogical [REDACTED] makes perfect sense. More importantly, the ultimate price of [REDACTED] also makes sense— [REDACTED]
[REDACTED], but as a reflection of the profitable market rate among REC-hungry California utilities. Accordingly, it then becomes unreasonable to view the [REDACTED] sale price to SCE as anything other than a market reflection as well. In sum, the REC prices at issue in this proceeding are fully explained by simple market forces, driven by the California RPS and shifting energy trends.

31 The Company alleges that [REDACTED]
[REDACTED]^{54/} Mr. De Boer testified on cross examination that [REDACTED]

[REDACTED]^{55/} [REDACTED]
[REDACTED]
[REDACTED]^{56/} When asked by a Commissioner whether [REDACTED]

^{52/} De Boer, Exh. No. TAD-6HC at 1.
^{53/} Schoenbeck, Exh. No. DWS-1HCT at 5:1.
^{54/} De Boer, Exh. No. TAD-3HCT at 12:1-3.
^{55/} De Boer, Confidential TR. 174:3-5.
^{56/} Id. at 174:9-10.

[REDACTED]^{57/} Mr. De Boer
answered: [REDACTED]^{58/}

32 But Mr. De Boer's portrayal of [REDACTED]
[REDACTED] contradicts PG&E's statements and Mr. De
Boer's own testimony. PG&E expressly informed PSE [REDACTED]
[REDACTED]
[REDACTED]^{59/} Mr. De Boer acknowledges [REDACTED]
[REDACTED]
[REDACTED]^{60/} Hence, the only settlement condition between the
parties was for PSE to [REDACTED]. That
PG&E chose to accept the offer at [REDACTED] says far more about PG&E's urgent
need for RECs than it does about Company leveraging strategy.

4. Publicly Available Information Refutes PSE's Entitlement Claims

33 PSE entitlement to REC proceeds hinges upon Company testimony which
sharply contradicts publicly filed documents. The California utilities that bought
RECs from PSE publicly attest that REC sales were comparable to market or
independent of the California Receivable litigation settlement.^{61/} The CPUC has
accepted such statements as true, after investigation of the matter.^{62/}

Notwithstanding, in claiming an interdependence between the settlement and REC

^{57/} Id. at 174:24-25 (emphasis added).

^{58/} Id. at 175:1-2.

^{59/} De Boer, Exh. No. TAD-6HC at 1.

^{60/} De Boer, Exh. No. TAD-3HCT at 11:32 – 12:14.

^{61/} E.g., Schoenbeck, Exh. Nos. DWS-6, DWS-7, DWS-8, DWS-9, DWS-10, DWS-11.

^{62/} E.g., Schoenbeck, Exh. No. DWS-13.

sales, the Company takes a position entirely at odds with the findings of the CPUC and the statements of the California utilities—i.e., PSE founds its whole right to REC revenue on the claim that the REC sales prices were *dependent* on the Company’s “ingenuity” in using California Receivable litigation to [REDACTED] sales at a higher price.^{63/} Unfortunately, this Commission has been placed into the unenviable but inescapable position of having to accept the statements of either the California utilities or PSE, with the even more unsettling implication that the CPUC looked the other way in accepting the potentially untrue statements of the California utilities.

34 SCE informed the CPUC: “The Puget Contract’s pricing is *not* dependent on the Settlement Agreement and SCE would have chosen to enter into the Puget Contract *independent of* the Settlement Agreement.”^{64/} Thus, SCE was doubly emphatic that the CPUC should not divine any interdependency between the California Receivable litigation and REC sales. SCE spelled this out again with perfect clarity: “The Puget Contract should be evaluated *on its own merits* as a market transaction for the purchase of renewable energy, *irrespective of* the Settlement Agreement.”^{65/} PSE’s present claim, that REC sales should not be evaluated on their own merits, just cannot be squared with SCE’s statements.

35 The “Puget Contract” SCE refers to is labeled as SCE1 in ICNU testimony.^{66/} SCE1 comprises a huge portion of REC sales revenue: [REDACTED]

^{63/} De Boer, Exh. No. TAD-3HCT at 6:7-8.

^{64/} Schoenbeck, Exh. No. DWS-8 at 3 (emphasis added).

^{65/} Id. (emphasis added).

^{66/} Schoenbeck, Exh. No. DWS-1HCT at 7:24 – 8:1.

out of a [REDACTED] total,^{67/} at a price of [REDACTED].^{68/} In short, the amounts attributed to SCE1 alone are so proportionately significant that, if the Commission concurs with the CPUC in recognizing the *independence* of REC sales and the California Receivable settlement, then PSE's equitable claim to a shareholder allocation of REC revenue falls apart.

36 On June 18, 2009, the CPUC issued Resolution E-4244, expressly finding, after conducting its own investigation, that the SCE1 price was reasonable as compared to the shortlisted resources from its solicitation process. The CPUC specifically listed three attributes which demonstrate that the SCE1 "provides value."^{69/} Tellingly, no mention of the California Receivable litigation settlement was listed as a factor even considered by the CPUC. Essentially, the CPUC accepted the veracity of SCE's advice filing statements—that REC sales and litigation settlement discussions were completely independent of one another.

37 Moreover, there is no dispute in this case as to whether the CPUC was well informed about the California Receivable settlement. Mr. De Boer testifies that the CPUC approved the settlement;^{70/} that CPUC lawyers [REDACTED]
[REDACTED]^{71/} and that the CPUC [REDACTED]
[REDACTED]

^{67/} Id. at 5:1.

^{68/} Id.

^{69/} Schoenbeck, Exh. No. DWS-13 at 17.

^{70/} De Boer, Exh. No. TAD-1T at 6:11-14.

^{71/} De Boer, Exh. No. TAD-3CT at 10:13-15.

^{72/} As this Commission has recognized, SCE even provided the CPUC with [REDACTED]
[REDACTED]^{73/}

Thus, the CPUC not only was fully apprised of any effect the Receivable settlement had on SCE's bid price, but the CPUC was privy to [REDACTED]
[REDACTED].^{74/}

38 The CPUC's basis for finding the SCE1 price reasonable—comparative similarity to market bids—is the same characteristic attributed to other REC sale contracts in filings made by SCE and PG&E.^{75/} In each filing, the California utility sought approval of REC sales contracts by attesting that prices were comparable to prices for contracts entered into as a result of other utility solicitations.^{76/} As with SCE1, the CPUC then issued resolutions explicitly finding these contract prices reasonable *because* they were comparable to each respective utility's renewables solicitation.^{77/} Ultimately, in every instance in which the CPUC has issued a resolution concerning REC pricing at issue in this case, the CPUC found that the REC price was comparable to the market and not a high-price anomaly leavened by PSE's alleged leveraging strategy.

^{72/} De Boer, Confidential TR. 153:20-23 (emphasis added).

^{73/} Id. at 187:3-6.

^{74/} Id. at 187:8-25.

^{75/} Schoenbeck, Exh. Nos. DWS-6, DWS-7, DWS-9, DWS-10, DWS-11.

^{76/} Schoenbeck, Exh. Nos. DWS-1HCT at 7:22 – 8:6; DWS-6, DWS-7, DWS-8, DWS-9, DWS-10, DWS-11.

^{77/} Schoenbeck, Exh. Nos. DWS-1HCT at 8:23 – 9:2; DWS-12, DWS-14; accord De Boer, Confidential TR. 144:25 – 145:4.

39

These facts and findings parallel other recent CPUC proceedings. In 2009, SCE filed for approval of REC sales contracts executed with PacifiCorp.^{78/} The CPUC approved the SCE-PacifiCorp prices as reasonable.^{79/} Moreover, although PacifiCorp and SCE had also settled litigation related to the Energy Crisis of 2000-2001, neither SCE nor the CPUC attributed any portion of REC price levels to an interdependent relationship with the PacifiCorp litigation settlement.^{80/}

C. REC Proceeds and Shareholder Debt Are Unrelated and REC Revenue Should Not Be Applied to Mitigate Shareholder Losses

1. PSE's Position is Self-Contradictory and Unreliable

40

The Company makes two admissions that demonstrate the purely speculative and ultimately weak connection between REC proceeds and the California Receivable. First, Mr. De Boer testifies that [REDACTED]
[REDACTED]
[REDACTED]^{81/} In light of this statement alone, it is difficult to justify allocation of over \$21 million to shareholders for a value that [REDACTED]
[REDACTED]. In fact, Mr. De Boer admits that [REDACTED]
[REDACTED]^{82/}

41

Notwithstanding, PSE requests \$21 million in shareholder recovery on renewable assets because [REDACTED] allegedly reflect [REDACTED]^{83/} This

^{78/} Schoenbeck, Exh. Nos. DWS-16, DWS-17.

^{79/} Schoenbeck, Exh. No. DWS-18.

^{80/} Schoenbeck, Exh. Nos. DWS-1HCT at 9:8-11; DWS-16, DWS-17, DWS-18.

^{81/} De Boer, Exh. No. TAD-3HCT at 17:2-4.

^{82/} De Boer, Confidential TR. 128:9-13.

^{83/} De Boer, Exh. No. TAD-3HCT at 17:5.

brings up a second glaring fact about the speculative basis of PSE's claim—that the relied upon points of “market data are *not* plentiful.”^{84/} In sum, the Company concedes that it is not only impossible to quantify the alleged value of its actions, but that even the estimate of claimed value is based upon scant data. These facts hardly constitute a reasonable basis for a \$21 million shareholder windfall on top of the Company's total return of and return on its investment.

42 Moreover, lest there be any question about the fortuity of the ultimate value of REC and CFI revenue, there is no dispute that renewable assets “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.”^{85/} Time and chance, not Company “ingenuity,” are responsible for REC and CFI sales and PSE has no equitable claim to proceeds beyond normal revenue allowances.

2. PSE's Position Rests on Flawed Logic

43 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The Company had offered each California utility [REDACTED]

[REDACTED].^{86/} SCE won that bid fairly. The notion that PSE would scuttle the whole settlement—despite SCE's

^{84/} Id. at 9:6 (emphasis added).

^{85/} Id. at 5:6-9 (emphasis added).

^{86/} De Boer, Confidential TR. 124:20-25, 173:14-22, 177:17-20; accord De Boer, Exh. No. TAD-12HC at 3-4.

faithful compliance with the Company's original offer—not only would have been inequitable, it would have been contrary to PSE's own financial interests.

44 Another serious flaw in the Company's logic concerns the role of SDG&E. [REDACTED]

[REDACTED].^{87/} SDG&E, along with SCE and PG&E,

[REDACTED]

[REDACTED].^{88/} [REDACTED]

[REDACTED].^{89/} Ultimately, however, [REDACTED]

[REDACTED].^{90/}

45 The flaw in the Company's position is apparent when recognizing that SDG&E has received the full benefit of the PSE settlement, [REDACTED]

[REDACTED].^{91/} According to PSE, SCE and PG&E paid

higher than market REC prices, [REDACTED], [REDACTED]

[REDACTED]

[REDACTED]. It is unlikely that SCE and PG&E [REDACTED]

[REDACTED]. Conversely, if SCE and PG&E willingly paid

market prices for badly needed RECs to satisfy California PRS requirements, no

quandary exists.

3. PSE Assumed the Risk of the California Receivable

^{87/} De Boer, Confidential TR. 121:2-8.

^{88/} De Boer, Exh. No. TAD-12HC at 3-4.

^{89/} De Boer, Exh. No. TAD-3HCT at 8:15 – 9:3.

^{90/} De Boer, Confidential TR. 124:14-16.

^{91/} Id. at 124:17-19, 125:4-7.

46 When PSE received Commission approval to merge with Washington Natural Gas Company in 1997, a rate stabilization plan was ordered until December 31, 2001.^{92/} During that same period, PSE had no rate mechanism to track power cost variations akin to the power cost adjustment mechanism that is currently in place.^{93/} Hence, PSE's shareholders assumed all of the risks and enjoyed all of the benefits resulting from wholesale activities during the period covering the Energy Crisis of 2000-2001,^{94/} from which the California Receivable litigation originates.

47 Logic dictates against allocating a portion of REC Revenue in this proceeding to mitigate shareholder Energy Crisis loss. All benefit derived from wholesale activity in 2000-2001 was the sole entitlement of PSE shareholders. Conversely, shareholders should also absorb any adverse results of the Company's wholesale trading activity during that same period. Indeed, as Mr. De Boer, admitted on cross examination, the "California receivable would never be collected from retail rate payers in Washington under any accounting scenario."^{95/}

48 PSE already earns a return on and a return of its capital invested in the renewable resources that generate the REC Revenues. The REC Revenues are a ratepayer benefit, and giving any ratepayer benefit to PSE's shareholders would result in cost over recovery. The Company has already levied the burden associated with mitigating its own California Receivable losses upon ratepayers for years, by

^{92/} Re Application of PSE, Docket No. UE-960195, Fourteenth Suppl. Order (Feb. 5, 1997).
^{93/} Schoenbeck, Exh. No. DWS-1HCT at 9:24 – 10:2.
^{94/} Id. at 10:2-4.
^{95/} De Boer, TR. 109:23-25.

including over \$4 million worth of legal and consultant fees in rates.^{96/} There is no justification to allow any further recovery on the California Receivable.

D. PSE's Proposed Revenue Distribution Unduly Harms Ratepayers

49 PSE proposes that a portion of the REC Revenues first be used to offset the California Receivable and additional low income conservation programs, and that any remaining revenues would be used to reduce regulatory assets.^{97/} Under the Company's proposal, the allocation of REC and CFI proceeds is front loaded to benefit shareholders and low income programs, to the detriment of the vast majority of ratepayers. PSE would earmark existing net revenue associated CFIs and non-contract REC sales to fund half of the low income programs,^{98/} while diverting the remaining revenues to shareholders and low income programs until shareholders and low income programs receive a full allocation.^{99/} There is no justification for this preferential treatment.

50 More importantly, crediting the REC revenues to a regulatory asset, rather than a direct credit to customers unnecessarily reduces the benefits to current ratepayers who have paid for the resources that generated the REC Revenues. All REC revenues should be promptly refunded back to customers as soon as possible after the revenues are received by PSE through a direct rate credit. This result is also supported by the need to offset the rate increase in PSE's current rate case given current economic conditions.

^{96/} Schoenbeck, Exh. No. DWS-15; De Boer, Confidential TR. 183:19 – 184:19.

^{97/} De Boer, Exh. No. TAD-1T at 9:5 – 10: 7.

^{98/} De Boer, Exh. No. TAD-1T at 4:12-17; DWS-1HCT at 5:11-13.

^{99/} De Boer, Exh. No. TAD-1T at 4:12 – 5:5; DWS-1HCT at 5:13 – 6:1.

1. The Commission Should Not Provide PSE Shareholders or the Low Income Programs Any Revenues More Quickly Than Ratepayers

51 PSE proposes to provide shareholders and low income programs with a full allocation benefits by [REDACTED],^{100/} while ratepayers would not receive a full allocation until later.^{101/} ICNU opposes allocation to shareholders and low income programs as an initial matter; however, there is no reason to provide the benefits of the RECs sales to shareholders and low income programs more quickly, *even if* the WUTC approves an allocation to these groups. The uneven distribution proposed by the Company harms ratepayers when the time vSalue of money is considered. As demonstrated by ICNU, ratepayers suffer a [REDACTED] loss on a net present value (“NPV”) basis under the Company plan.^{102/} There is simply no justification for effectively penalizing the vast majority of PSE customers (the very group which pays for the renewable resources that generate the REC Revenues) by paying shareholders and low income customers first.

2. All REC Revenues Should Be Immediately Returned as Rate Credit and Not Used to Reduce Regulatory Assets

52 While PSE originally proposed that any REC proceeds should be used to offset its regulatory assets,^{103/} PSE also “recognizes that there are other reasonable approaches to allocating these credits to customers, as suggested by the parties to this case.”^{104/} PSE never proposed a specific methodology regarding how to credit net

^{100/} Schoenbeck, Exh. No. DWS-1HCT at 6:1-4.

^{101/} See id. at 6:4-5.

^{102/} Schoenbeck, Exh. No. DWS-1HCT at 6:5-11.

^{103/} De Boer, Exh. No. TAD-1T at 9:5 – 10: 7.

^{104/} De Boer, Exh. No. TAD-3T at 19:18 – 19: 19.

revenues to customers, and PSE stated that it “has not made a proposal as to how the underlying tariff would credit customers.”^{105/} ICNU proposes that all net revenue simply be flowed back to customers through a separate tariff rider, in the exact same manner that the costs of renewable facilities providing the REC revenue are assigned in rates.^{106/} REC revenues would flow back to ratepayers as PSE receives them, and all amounts would be returned to customers around [REDACTED].^{107/}

53 Staff supports using the REC proceeds to reduce PSE’s regulatory assets, but also recognizes that the direct refund approach has merit. Both approaches match “the distribution of REC/CFI benefits with the manner in which the corresponding assets are allocated to customers in the ratemaking process.”^{108/} Staff recognizes that the direct refund approach is “fair” but prefers a regulatory offset because the benefits will accrue over a longer time period and it may not result in a rate increase when it expires.^{109/} Staff’s proposes to reduce PSE’s regulatory liability account over a period of ten years.^{110/}

54 The Commission should reject Staff’s proposal and all REC revenues should be paid to ratepayers as an immediate rate credit that occurs at the same time the PSE obtains the REC revenues. The direct benefit approach should be approved by the Commission precisely because it will accrue immediately, over a shorter time period, and will result in a larger credit to ratepayers. Ratepayers are experiencing

^{105/} Schoenbeck, Exh. No. DWS-19 at 1.
^{106/} Schoenbeck, Exh. No. DWS-1HCT at 11:11 – 12:8.
^{107/} See Schoenbeck, Exh. No. DWS-1HCT at 6.
^{108/} Parvinen, Exh. No. MPP-1T at 8:13 – 9:23.
^{109/} Parvinen, Exh. No. MPP-1T at 9:18-23.
^{110/} Parvinen, Exh. No. MPP-1T at 8:16-18, 9:3-6.

the worst economic conditions this country has experienced since the Great Depression, and the Commission should utilize whatever regulatory tools available to support customers in these difficult times. In addition, the Commission is considering PSE's request for an overall general rate increase, and the REC revenues should be used to offset any harmful impacts to customers that flow out of that proceeding.

55 The problem of intergenerational inequity comes into full force if revenue offsets are not promptly applied—i.e., past and present ratepayers will end up subsidizing future ratepayers unnecessarily.^{111/} Future ratepayers should not get future REC benefits *plus* revenue from past RECs for which current ratepayers have been charged. Those who have been and are currently paying for RECs should receive the benefit for them as quickly as possible.^{112/} Therefore, the REC proceeds should be passed through more or less as they are received.

56 Essentially, the Commission is presented with a policy decision regarding whether to return REC revenues to ratepayers more quickly in larger amounts, or in smaller amounts over a longer period of time. The equities in this proceeding, including returning the amounts to those customers which are currently paying for the wind projects, the time value of money and the current economic climate, all support returning the monies directly and expeditiously to customers.

E. Low Income Program Allocation is Best Determined in a General Rate Case

57 ICNU has often supported or not opposed low income assistance programs

^{111/} 1 Leonard S. Goodman, *The Process of Ratemaking* at 508, 515.

^{112/} Accord Parvinen, Exh. No. MPP-1HCT at 8:3-11.

in the past.^{113/} In opposing PSE's proposal, ICNU is not taking an *anti*-low income position. Rather, ICNU's position is one of essential fairness: no customer class, whether industrial or low income residential, should receive preference in REC revenue allocation in disproportion to the Company's cost-of-service allocation.^{114/} As Staff rightly points out: "Giving \$10 million to \$20 million exclusively to one group of customers violates th[e] principle of fairness."^{115/}

58 The Commission generally considers low income assistance in the context of a general rate case, when the balance of all factors may be considered, and this policy should also control in this proceeding.^{116/} The proposal to assist low income customers is not necessarily problematic on its merits, but it is inappropriate for determination in the present forum of a deferral case.

59 Alternatively, if the Commission approves a low income allocation in this proceeding, ICNU recommends that any amounts earmarked for low income programs be funded through the residential class allocation.^{117/} Again, simple equity supports such a distribution—the residential class is the direct and primary beneficiary of low income programs, so the residential class should also fund such programs.

^{113/} E.g., WUTC v. PSE, Docket No. UE-060266, Final Order at ¶ 144 (Jan. 5, 2007); WUTC v. PSE, Docket No. UE-072300, Final Order at ¶¶ 49, 50 (Oct. 8, 2008); WUTC v. PacifiCorp, Docket No. UE-090205, Final Order at ¶ 25 (Dec. 16, 2009).

^{114/} Schoenbeck, Exh. No. DWS-1HCT at 10:19-22.

^{115/} Parvinen, Exh. No. MPP-1HCT at 11:17-18.

^{116/} E.g., WUTC v. PSE, Docket No. UE-060266, Final Order at ¶ 144; WUTC v. PSE, Docket No. UE-072300, Final Order at ¶¶ 49, 50; WUTC v. PacifiCorp, Docket No. UE-090205, Final Order at ¶ 25; see also WUTC v. PacifiCorp, Docket No. UE-080220, Final Order at ¶¶ 37, 39 (Oct. 8, 2008) (including WUTC approval of general rate case settlement in recognition of the argument that low income customer and company rate interests were balanced).

^{117/} Schoenbeck, Exh. No. DWS-1HCT at 11:3-10.

60

PSE essentially advances a “trickle-up” or “rising tide lifts all boats” argument about sundry all-class benefits that will purportedly result from funding low income programs;^{118/} but PSE’s claims are contradicted by Staff, which testifies that the Company’s low income proposals would not be cost effective.^{119/} Hence, the Company’s allocation will not only harm all ratepayers generally, but will also discredit the validity of PSE’s overall conservation program by subjecting the Company to the reasonable criticism that its investments are not cost effective.

61

PSE and the Joint Parties’ proposal to provide the low income programs with more than their share of REC revenues is contrasted with ICNU’s position, which does not favor any customer group. In fact, ICNU’s proposal would preclude all benefit to direct access industrial customers under Schedule 449.^{120/} Thus, ICNU is not seeking to maximize the allocation potential for its members, in disregard to fairness, even though many ICNU members receive service under Schedule 449. In contrast, while residential customers would already be receiving *over half* the REC revenue allocation using the Company cost-of-service study,^{121/} PSE and the Joint Parties propose to allocate still more revenue to low-income programs. Such an unbalanced allocation would be unjust.

^{118/} Englert, et al., Exh. No. JOINT-2T at 12:4 – 14:20; 16:1-20.
^{119/} Parvinen, Exh. No. MPP-1HCT at 12:4-12, 12:18-21, 13:1-7.
^{120/} Schoenbeck, Exh. No. DWS-1HCT at 12:1.
^{121/} Id.

III. CONCLUSION

62

ICNU urges the Commission to reject PSE's proposed REC Revenue allocations to Company shareholders and low income programs, and to order PSE to offset all REC and CFI net revenue against ratepayer costs for renewable generating resources. ICNU requests that revenues be flowed directly back to customers, using the same cost-of-service allocation the Company uses in rates. Regardless of whether the Commission provides PSE or the low income programs a portion of the REC Revenues, the Commission should ensure that REC Revenues are returned to ratepayers as quickly as possible through a separate rate credit. Also, if the Commission allows an allocation to fund low income programs, ICNU alternatively requests that all funding earmarked for low income programs be diverted from the residential class which directly and primarily benefits from such programs.

Dated in Portland, Oregon, this 17th day of March, 2010.

Respectfully submitted,

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