

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

Amended Petition of	)	DOCKET UE-070725
)	
)	
PUGET SOUND ENERGY, INC.	)	ORDER 03
)	
)	
For an Order Authorizing the Use of	)	FINAL ORDER GRANTING, IN
the Proceeds from the Sale of	)	PART, AND DENYING, IN PART,
Renewable Energy Credits and Carbon	)	AMENDED PETITION;
Financial Instruments	)	DETERMINING APPROPRIATE
	)	ACCOUNTING AND USE OF NET
	)	PROCEEDS FROM THE SALES OF
	)	RENEWABLE ENERGY CREDITS
	)	AND CARBON FINANCIAL
.....	)	INSTRUMENTS

Synopsis: *The Commission authorizes deferred accounting treatment for the proceeds derived from Puget Sound Energy, Inc.'s sales of Renewable Energy Credits and Carbon Financial Instruments. The Commission exercises its discretion to allow PSE to use \$3.3 million of these proceeds as a credit against amounts arguably owed to PSE by several California utilities for power PSE sold into California during the 2000-2001 energy crisis. The Commission also exercises its discretion to allow the Company to allocate approximately \$4.6 million from the deferred account to fund additional cost-effective low income energy efficiency during the current two-year program period. The Commission orders that the balance of funds in the deferred account as of November 30, 2009 (i.e., the balance on that date minus \$7.9 million) be paid to customers as a bill credit. The Commission finally determines that all other proceeds derived from the Company's sales of Renewable Energy Credits and Carbon Financial Instruments will be booked in a regulatory liability account, which will be used to reduce PSE's rate base for ratemaking purposes. The proceeds booked to the regulatory liability account, with interest, will be amortized over ten years.*

SUMMARY

- 1 **PROCEEDINGS:** On October 8, 2009, pursuant to WAC 480-07-395(5), Puget
Sound Energy, Inc. (“PSE” or “the Company”) filed its Amended Petition requesting
the Washington Utilities and Transportation Commission (Commission) to enter an
order authorizing PSE to defer the net revenues from the sale of certain Renewable
Energy Credits and Carbon Financial Instruments and to use these revenues in
specific ways identified in the Amended Petition and supported by testimony filed
jointly with the Northwest Energy Coalition, the Renewable Northwest Project and
the Energy Project, and separate testimony by PSE.
- 2 Following the filing of Response testimony on January 28, 2010, by Staff, Public
Counsel, the Industrial Customers of Northwest Utilities and Kroger Co., and
Rebuttal testimony by PSE on February 18, 2010, the Commission conducted
evidentiary hearings on March 5, 2010. The parties filed briefs on March 17, 2010.
- 3 **PARTY REPRESENTATIVES:** Sheree Strom Carson, Perkins Coie, Bellevue,
Washington, represents PSE. Sarah A. Shifley, Assistant Attorney General, Seattle,
Washington, represents the Public Counsel Section of the Washington Office of
Attorney General (Public Counsel). Robert D. Cedarbaum, Senior Assistant Attorney
General, Assistant Attorney General, Olympia, Washington, represents the
Commission’s regulatory staff (Commission Staff or Staff).¹
- 4 S. Bradley Van Cleve and Irion Sanger, Davison Van Cleve, Portland, Oregon,
represent the Industrial Customers of Northwest Utilities (ICNU). Michael L. Kurtz
and Kurt J. Boehm, Boehm, Kurtz & Lowry, Cincinnati, Ohio, represent the Kroger
Co., on behalf of its Fred Meyer Stores and Quality Food Centers divisions (Kroger).
Norman Furuta, Associate Counsel, Department of the Navy, San Francisco,
California, appeared for the Federal Executive Agencies (FEA).² Ronald L. Roseman,

¹ In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See RCW 34.05.455.*

² The Federal Executive Agencies appeared at prehearing through Mr. Furuta, but elected not to petition for intervention.

Attorney, Seattle, Washington, represents the Energy Project. David S. Johnson, attorney, represents the Northwest Energy Coalition (NVEC). Ann E. Gravatt, Policy Director, represents the Renewable Northwest Project (RNP).

5 **COMMISSION DETERMINATIONS:** The Commission grants PSE's Amended Petition to the extent of allowing deferred accounting treatment for the proceeds derived from the Company's sale of Renewable Energy Credits and Carbon Financial Instruments. The deferred account will be treated as a regulatory liability on PSE's books and will accrue interest at a rate to be determined during the compliance phase of this proceeding. The Commission denies PSE's request for authority to use approximately \$21 million of these proceeds as a credit against amounts arguably owed to PSE by several California utilities for power PSE sold into California during the 2000-2001 energy crisis, but exercises its discretion to allow the Company to take from the deferred account the sum of \$3.3 million for this purpose. The Commission denies PSE's request for authority to dedicate approximately \$20 million of these proceeds to fund low income energy efficiency and renewable energy projects, but exercises its discretion to allow the Company to allocate approximately \$4.6 million from the deferred account to fund additional cost-effective low income energy efficiency during the current two-year program period. The Commission orders that the balance of funds in the deferred account as of November 30, 2009 (*i.e.*, the balance on that date less \$7.9 million) be paid to customers as a bill credit. The Commission also determines the accounting and rate treatment for all other proceeds derived from the Company's sales of Renewable Energy Credits and Carbon Financial Instruments. These will be booked in a regulatory liability account, which will be used to reduce PSE's rate base for ratemaking purposes. The proceeds, with interest, will be amortized over ten years.

MEMORANDUM

I. Background and Procedural History

6 In April 2007, PSE filed an accounting petition in Docket UE-070725, seeking to defer the proceeds of sales of Renewable Energy Credits (RECs) and Carbon Financial Instruments (CFIs).³ PSE subsequently had discussions with various

³ We will refer collectively in this Order to the REC and CFI revenues as "REC Proceeds."

interested persons about the use of the proceeds from such sales. On October 8, 2009, PSE filed an amended petition with a proposed allocation of the proceeds, as follows:

- (1) Provide funding for low income energy efficiency and renewable energy services.
- (2) Credit a portion of the REC Proceeds to sums owed to PSE by several California utilities since 2001. This sum, the "California Receivable," reflects unpaid amounts owed to the Company from California utilities for power PSE sold into California during the 2000-2001 energy crisis.
- (3) Provide a credit to customers by offsetting the REC Proceeds against a regulatory asset.

7 Along with its amended petition, PSE filed testimony in the docket, including joint testimony with representatives of the NVEC, the RNP and The Energy Project (Joint Parties), and the individual testimony of Mr. Tom De Boer, the Company's Director, Federal and State Regulatory Affairs. The joint testimony focuses on the company's proposal to allocate up to approximately \$20 million of the net REC Proceeds to low income energy efficiency and renewable energy services. The amended petition states the funds "would be used to cover the full spectrum of energy efficiency measures, including . . . education, home audit or assessment, installation of baseload and shell measures, and inspections."⁴

8 Mr. De Boer's separate testimony discusses principally the Company's proposal to allocate up to 40 percent of the REC Proceeds, not to exceed \$21,062,800, to offset the so-called California receivable on PSE's books. The \$21 million receivable is net of approximately \$39.5 million in write-offs PSE has already recognized on sales of power to California utilities during 2000 and does not include interest.

9 Mr. De Boer also testifies about the Company's proposal to credit the balance of the proceeds against a regulatory asset, such as the previously approved recovery over a ten year period of approximately \$68 million in remaining working capital costs associated with the December 2006 wind storm. He states this will "lower customer rates in a way that reduces volatility in retail rates."⁵

⁴ Amended Petition ¶14.

⁵ De Boer, Exh. TAD-1T at 5:14.

- 10 The Commission agreed with Staff's recommendation to set this docket for hearing without consideration at an open meeting. The Commission conducted a duly noticed prehearing conference on December 1, 2009, and entered Order 01- Prehearing Conference, on December 4, 2009.
- 11 Staff, Public Counsel, ICNU and Kroger Co., filed their respective Response testimonies and exhibits on January 28, 2010, in accordance with the procedural schedule. They all oppose PSE's petition, offering various alternatives for the accounting and rate treatment of REC Proceeds.
- 12 PSE and the Joint Parties filed Rebuttal testimony on February 18, 2010. The Commission conducted evidentiary hearings on March 5, 2010. The parties filed simultaneous briefs on March 17, 2010.

II. Discussion and Decisions

A. Introduction

- 13 Renewable Energy Credits are intangible assets that represent the right to claim the environmental attributes of a renewable generation facility associated with electricity generated from that facility. Each renewable or green credit represents the environmental attributes from 1 MWh of wind power or power generated by other renewable energy sources. RECs are generally defined by three criteria: year of production (vintage); technology (e.g., wind, landfill gas); and location (typically by state). Jurisdictions across the country use these three criteria to define eligible RECs under their policies, independent of each other and, to date, without federal guidelines.⁶

⁶ In the western United States, RECs are tracked and certified by the Western Renewable Energy Generation Information System (WREGIS). WREGIS is an independent, renewable energy tracking system for the region covered by the Western Electricity Coordinating Council (WECC). WREGIS tracks renewable energy generation from units that register in the system using verifiable data and creates renewable energy certificates for this generation. WREGIS Certificates can be used to verify compliance with state and provincial regulatory requirements (Renewable Portfolio Standards, for example) and in voluntary market programs. See, "Home" at <http://www.wregis.org/>

- 14 RECs can be transferred from one owner to another and used to demonstrate compliance with a state's Renewable Portfolio Standard (RPS). With certain conditions and limitations, both Washington and California allow utilities to comply with RPS mandates through use of tradable RECs.
- 15 PSE, like other Washington utilities, must comply with the renewable resource portfolio standards established by the Energy Independence Act (EIA),⁷ which requires utilities to have certain percentages of renewable resources in their resource portfolios by specific dates.⁸ Utilities can comply with the Washington EIA by acquiring renewable resources, by acquiring interests in the environmental attributes of renewable facilities, embodied in RECs, or by acquiring a combination of the two.⁹
- 16 PSE renewable resources that currently generate RECs, or that may generate RECs in the future, include: Hopkins Ridge wind plant, Wild Horse wind and solar plants, the Klondike III Purchased Power Agreement, and upgrades to PSE hydro facilities. PSE will have excess RECs at least until the EIA's requirements are effective in 2012. At that time the Company's excess RECs will decline and perhaps end as the renewable requirements increase in the year 2020. Presently, however, the Company is able to sell RECs to other utilities that need them to meet their respective RPS.¹⁰ PSE, in fact, has received substantial revenues from sales of RECs and CFIs during recent periods, and will receive substantially more REC revenues over the next several years, pursuant to existing REC sales contracts.¹¹
- 17 REC markets are relatively new and in early stages of development. Markets emerging across the country are defined by each state's laws and regulations, which are subject to ongoing pressures by affected parties seeking to modify the laws and

⁷ RCW 19.285.

⁸ RCW 19.285.040(2)(a).

⁹ RCW 19.285.040(2)(d).

¹⁰ Compliance-needy utilities may be subject to the Act or a statute with similar renewable portfolio standards. In this case, the RECs were generated from sales to utilities located in California, a state that has renewable portfolio standards even more rigorous than the Act. Among other things, in California, a utility purchasing a REC must also purchase an equivalent amount of energy, pursuant to existing state rules. De Boer, TR. 158:1-4.

¹¹ Staff Brief ¶ 3 (citing Parvinen, Exh. MPP-1HCT at 7:14-17, and noting that the specific REC Proceeds amounts are confidential).

regulations. In general, RECs may be traded as a bundled product, where the electricity and environmental attributes are sold together to the purchaser, or unbundled, where only the environmental attributes are sold, separate from the power actually generated by a renewable resource.

- 18 CFI's are intangible assets that are similar to RECs. PSE holds proceeds from the sale of CFI's related to its participation in the Chicago Climate Exchange (CCX). CCX is a greenhouse gas emission registry, reduction and trading system for all six greenhouse gases. CCX is a self-regulated, rules-based exchange designed and governed by the CCX to reduce greenhouse gases. Members of CCX make a voluntary – but legally binding – commitment to meet certain annual emission reduction targets. In February 2007, PSE formally joined CCX as a Phase 1 member. Phase 1 membership was limited to years 2003-2006. PSE elected not to participate in the Phase II program. The CFI's PSE has traded at CCX represents the equivalent of 100 metric tons of CO₂.
- 19 CCX members, including PSE, pledged to reduce emissions by 1 percent per year in Phase I, for a total 4 percent reduction in four years. The reductions a member was required to make were determined using a calculated baseline. The baseline for Phase I was equal to the direct emissions average for the period 1998 to 2001. Those members that reduced their emissions below the target have surplus allowances to sell, and those members who emit above the targets comply by purchasing CFI's from other members of CCX.
- 20 The 1998-2001 baseline and emission outputs for 2003 – 2006 were calculated, audited, and verified by a third party reviewer and were approved by the CCX in November 2008. Following a completed audit, PSE became eligible to trade a certain quantity of CFI's banked during each year of its membership. PSE's membership with CCX expired November 14, 2009.
- 21 While the Company could and did sell both RECs and CFI's prior to 2009, PSE states the sale of RECs became an integral part of its strategy to settle protracted litigation with Southern California Edison (SCE), Pacific Gas and Electric (PG&E) and San Diego Gas and Electric (SDG&E) in late 2008 and early 2009. The litigation, which continued for more than eight years, involved sales of power by PSE into the California market during 2000 and 2001, in a series of transactions. The prices for power sold were determined in the California-created market auction process of the

Independent System Operator (ISO). The California market structure dictated by California law during the energy crisis generally precluded direct purchases by utilities. Instead, except for certain “grandfathered” arrangements, their purchases had to be made through the Power Exchange (“PX”) and ISO market auctions. In 2000 and 2001, Southern California Edison (SCE), PG&E (Pacific Gas & Electric) and San Diego Gas & Electric (SDG&E) did not make timely or complete payments to the ISO and the PX for power received from PSE. This gave rise to PSE’s California Receivable claim.

- 22 In the litigation, PSE sought to recover significant amounts it claimed it was owed in connection with these power sales. Mr. De Boer testified that the full amount of the California Receivable exceeded \$95 million, including principal and interest.¹² The \$21 million receivable PSE seeks to recover out of REC Proceeds is the net amount PSE maintains on its books for financial accounting purposes after having written off the balance of the principal amount initially on the Company’s books.¹³

B. PSE’s Amended Petition

- 23 PSE filed its Amended Petition on October 8, 2009, along with supporting testimony by Mr. De Boer and joint supporting testimony sponsored by the Company, NWECC, the Energy Project, and RNP.
- 24 The Amended Petition seeks Commission authorization on three matters:
1. Calculation of net REC Proceeds.
 2. Disposition of net proceeds for “any and all sales of RECs and CFIs by PSE, including future sales of RECs and CFIs.”¹⁴
 3. Accounting treatment to credit REC Proceeds against a regulatory asset.

¹² DeBoer, TR. 167:25 – 168:9; *see also* PSE Brief ¶ 18.

¹³ *Id.*; DeBoer, Exh. TAD-3HCT at 17:8-11.

¹⁴ Amended Petition ¶ 12.

C. Calculation of REC Proceeds

- 25 The Company proposes that net REC Proceeds be determined by subtracting from revenues generated by sales of RECs and CFIs “expenses incurred in negotiating the transactions, finalizing the sale agreements and fulfilling the obligations under such agreements, including, but not limited to, attorney fees, broker commissions, royalty payments or other third party fees (such as WREGIS-related fees, the Center for Resource Solution fees and audit fees) and the net costs of the energy component of the transaction, if any.”¹⁵ Other than this, PSE does not offer any detail concerning the expenses it proposes to subtract from gross REC Proceeds to determine the net proceeds from REC sales. PSE does not address this aspect of its proposal in its brief.
- 26 Public Counsel argues that PSE's calculations of net proceeds of REC and CFI sales should be reviewed for reasonableness.¹⁶ Although the amount of expense PSE proposes to deduct from the gross REC Proceeds is “highly confidential” under the terms of the protective order in this proceeding, Public Counsel points out that it is substantial for the sales made prior to November 2009.
- 27 Public Counsel states two primary concerns regarding PSE’s proposed calculation of net proceeds. Public Counsel argues first that the Company’s definition of “cost” is too vague.¹⁷ PSE, for example, “has not indicated whether internal labor costs, which are currently reflected in its base rates, would be included in its calculation of net proceeds.”¹⁸
- 28 Public Counsel’s second concern is that PSE includes “net costs of the energy component of the transaction” in its calculation of net sales proceeds.¹⁹ These costs, according to Mr. Norwood’s analysis for Public Counsel, represent any difference between the contract price for energy sold and the cost PSE incurs in supplying the energy transaction.²⁰ Public Counsel argues that “there is no apparent relationship

¹⁵ *Id.*

¹⁶ Public Counsel Brief ¶ 36.

¹⁷ *Id.* ¶ 38 (citing Norwood, Exh. SN-1HCT at 20:5-6).

¹⁸ *Id.*

¹⁹ *Id.* ¶ 39 (citing Exh. SN-12).

²⁰ *Id.*

between the cost of energy sold and the contract price of RECs under PSE's sales agreements with the California utilities."²¹ Considering this, Public Counsel argues, it is not reasonable to reflect any such energy cost differences in determining the net proceeds of REC sales.

29 Public Counsel proposes that any costs reflected in PSE's REC and CFI sales proceeds calculations be reviewed and reconciled in future PSE general rate cases. Public Counsel also argues that we "should require PSE to file regular reports regarding REC sales, revenues, and costs, so that the Commission and interested parties can monitor the level of REC Proceeds returned to ratepayers going forward."²²

30 **Commission Determination:** Public Counsel raises legitimate concerns about how the amounts of net proceeds from individual REC sales are determined. The record in this proceeding does not include sufficient detail concerning how the amounts identified as the net proceeds of sales received through November 30, 2009, were determined. We do not know, for example, if attorneys fees PSE incurred in the California Receivable litigation are netted against the proceeds even though these apparently were recovered in rates during the pendency of the litigation. Using Public Counsel's example, we do not know whether internal labor costs currently reflected in its base rates are netted against gross proceeds.

31 We also agree with Public Counsel that PSE has not established a relationship between the cost of energy sold and the contract price of RECs under PSE's sales agreements with the California utilities that would justify netting against gross REC Proceeds any difference between the contract price for energy sold and the cost PSE incurs in supplying the energy transaction.

32 In light of these concerns, we require PSE to provide the Commission a full accounting of its calculation of net proceeds, with supporting narrative explanation, at the time, and in support of, the compliance filing PSE will make to satisfy the terms of this Order. Parties will have an opportunity to challenge PSE's determination of net proceeds by filing motions seeking appropriate relief. The Commission will conduct such additional process as may be necessary to resolve any dispute.

²¹ *Id.* (citing Norwood, Exh. SN-1HCT at 20:9-16).

²² *Id.* ¶ 40.

- 33 Because PSE will be required under the terms of this Order to separately account for REC Proceeds, any costs reflected in the Company's prospective REC sales proceeds calculations will be reviewed and reconciled in future general rate cases. Accordingly, there is no need to impose a special reporting requirement with respect to REC sales, revenues and costs.

D. Disposition of Net REC Proceeds

- 34 PSE proposes the following disposition of the net REC Proceeds:

- (1) Credit up to 40 percent of existing REC Proceeds (*i.e.*, those PSE received through November 30, 2009), but no more than \$21.062 million, against 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").
- (2) Provide \$10 million from existing REC Proceeds and 20 percent of future REC Proceeds as they are received, capped at an additional \$10 million, to fund low income energy efficiency and renewable energy services.
- (3) Use any balance of existing REC Proceeds and 100 percent of future REC Proceeds to provide a credit to customers by offsetting the REC Proceeds against a regulatory asset or by providing a credit to customers through a tariff similar to the Production Tax Credit ("PTC") tracker.

In response to PSE's proposed disposition of net REC Proceeds, outlined above, Staff frames the fundamental question we face in a straightforward manner: "Who is entitled to the benefits of these REC Proceeds?"²³

²³ Staff Brief ¶ 4.

35 Staff's answer is equally straightforward:

The REC benefits should go to PSE's retail ratepayers, because they are the ones burdened with the responsibility of paying rates sufficient for PSE to recover all of the costs of the resources that generate the RECs and CFIs.²⁴

Staff argues that PSE's customers are entitled to 100 percent of the REC Proceeds without preference being given to any customer class. Although the parties' proposals for such an outcome vary in their details from Staff and each other, Public Counsel, ICNU and Kroger agree with this fundamental argument.²⁵

36 Even the Company, albeit subject to recommendations for different treatment of most or all of the REC Proceeds on its books as of November 2009,²⁶ recognizes that it is most appropriate to use all but a small part of the total REC revenues PSE will receive over the next several years under existing agreements to provide rate benefits across all retail customer classes. PSE specifically proposes that the majority of the REC Proceeds should be used to "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."²⁷ Indeed, PSE points repeatedly to the fact that under the proposal it makes in its Amended Petition, "the vast majority of the proceeds will be credited to electric customers and will lower

²⁴ *Id.*

²⁵ Public Counsel Brief ¶ 3 ("Public Counsel has carefully reviewed PSE's proposals and recommends that all REC and CFI sales proceeds be returned to ratepayers."); ICNU Brief at ¶ 1 ("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."); Kroger Brief at 2 ("Kroger recommends that the Commission direct that 100 percent of the proceeds from REC sales be credited to customers.").

²⁶ PSE states in its Brief: "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." REC Proceeds on PSE's books as of November 2009 are more than adequate to satisfy PSE's request that \$21 million be retained for shareholders. PSE Brief ¶ 9.

²⁷ *Id.* ¶ 1.

customer electric bills,”²⁸ and that the Company seeks only a “small share of the REC Proceeds.”²⁹

37 Staff argues that “all retail customers should share the proceeds from the sale of these RECs/CFIs on the same basis as the Commission allocates these resources in the rate making process.”³⁰ Staff states that Public Counsel, ICNU and Kroger concur.³¹ The rationale behind these parties’ arguments is that all of PSE’s retail ratepayers pay rates reflecting all costs attributable to the resources that generate RECs and CFIs, including return of and return on PSE’s investments in capital assets. In this connection, Staff points to Mr. Parvinen’s testimony that:

The Commission includes the corresponding investment amounts for these projects in PSE’s rate base and power supply calculations for ratemaking purposes. The Commission sets PSE’s rates to allow PSE an opportunity to recover the operating costs, taxes, and depreciation associated with these resources, as well as a return on the money PSE invested to acquire the resources. The Commission allocates the cost of these resources to the customer classes using a generation-based allocation factor.³²

Staff states these facts are not contested, pointing to testimony by witnesses for Public Counsel, ICNU and Kroger,³³ and arguing, moreover, that PSE agreed to Staff’s cost recovery testimony.³⁴ PSE’s opponents argue that because the Company recovers in

²⁸ See *Id.* ¶ 3. See also *Id.* ¶¶ 17, 29 and 63.

²⁹ *Id.* ¶ 17.

³⁰ Staff Brief ¶ 24 (quoting from Exhibit MPP-1HCT (Parvinen) at 3:20 – 4:2).

³¹ *Id.* (citing to Public Counsel: Norwood, Exh. SN-1HCT at 3:16-20; 4:3-7; 10:3-6; 11:20 – 12:3; 23:22 – 24:2 and noting that “Public Counsel takes no position in its testimony regarding the low income proposal. Apparently, Public Counsel views the low income proposal as REC money going to ‘PSE customers,’ (*i.e.*, as opposed to the Company”); citing also ICNU: Schoenbeck, Exh. DWS-1CT at 2:19-3:2; Kroger: Higgins, Exh. KCH-1T at 3:18-21; at 5:10-22; and 6:1-7).

³² Parvinen, Exh. MPP-1HCT at 6:21 – 7:6.

³³ See *supra* fn. 28.

³⁴ Staff Brief ¶ 21 (citing to De Boer, TR. 145:21 – 146:12 for the proposition that “all of PSE’s resource-related costs are part of revenue requirements and included in rates, [allowing recovery of] ‘such things as reasonable operations and maintenance costs, property taxes, income taxes, depreciation, and a reasonable return on shareholders’ investment in the wind facilities.’”)

rates the full costs of the underlying assets and a return on its investment, it is not entitled to a share of the REC Proceeds and they should be returned to all customers. Staff and ICNU also contend that no special allocation of REC Proceeds to low income customers is appropriate because low income customers pay no more in rates reflecting the costs of the REC-related renewable resources than any other residential customers.³⁵ Staff states that PSE and the low income advocates specifically acknowledge this point.³⁶

38 Staff contends that the treatment of REC Proceeds it proposes is faithful to the “benefit should follow burden” principle because the benefits of the RECs and CFIs follow the burden of cost responsibility, which is borne by the ratepayers. Thus, Staff argues:

The fair and principled approach to distributing the REC and CFI sales proceeds is to provide them to all ratepayers in the same manner those ratepayers pay in rates for the resources that generate the RECs.

Though PSE tries to make the analysis more complicated than it needs to be, the proper analysis is truly as straightforward as that.³⁷

1. Should REC Proceeds Be Credited Against the California Receivable?

39 Although Staff is correct that the facts related to the point that rates reflect all costs attributable to the resources that generate RECs and CFIs are uncontested, PSE does contest the significance of these facts to our determination of the appropriate use of REC Proceeds. PSE argues first that we 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.³⁸ PSE contends:

³⁵ Kroger also opposes in principle the special allocation of REC Proceeds to low income customers, but is open to the Commission’s exercise of its discretion to allow for use of REC Proceeds in this fashion. Public Counsel, as previously noted, takes no position on this question.

³⁶ Exh. J-13.

³⁷ Staff Brief ¶ 25.

³⁸ PSE Brief ¶ 23 (citing (Norwood), Exh. SN-1HCT at 10:1-19; Parvinen, Exh. MPP-1T at 8:3-11; Schoenbeck, Exh. DWS-1CT at 7:4-6; Higgins, Exh. KCH-1T at 6:2-4.

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.³⁹

Whether or not it might be “absurd” to do so, in point of fact, no one argues that PSE customers are entitled to the REC Proceeds because they have an *ownership interest* in the generation assets from which the RECs are derived. PSE’s argument is the classic “straw man,” fallacious in its premise and, hence, one that, as Staff puts it, “falls flat.”⁴⁰ Ownership of the underlying assets that give rise to the RECs simply is not a concept relevant to the parties’ arguments or our determination. Again, the principle at the heart of Staff’s and the other parties’ arguments, is that benefits should follow burdens and rewards should follow risks.

40 PSE itself acknowledges the applicability of this principle to the circumstances here, analogizing the sale of RECs to the sale of utility property, which the Company says “is instructive on the issue of allocation of gains between customers and shareholders.”⁴¹ In determining the proper allocation of gains realized from the sale of utility property, “the Commission relies on the broad principle that reward should

³⁹ *Id.* ¶ 25.

⁴⁰ Staff Brief ¶¶ 26 – 28. PSE cites *Bd. of Pub. Util. Comm’rs v. New York Tel. Co.*, 271 U.S. 23, 32 (1926), in support of its argument that the courts have long repudiated the idea that by paying for service, ratepayers thereby acquire an ownership interest in utility assets, quoting the opinion as follows:

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

We note that whatever the decision may stand for today, it is inapt to the circumstances here because PSE’s customers’ rates do include operating expenses, depreciation (*i.e.*, return of invested capital), and return on the capital invested in the renewable resources from which the RECs are derived. Thus, while no one argues PSE’s customers own these resources, it is indisputably the case that the ratepayers bear the full burden of cost responsibility for the resources that generate the RECs, as all the parties opposing PSE contend.

⁴¹ PSE Brief ¶ 26.

follow risk and benefit should follow burden.”⁴² PSE states that the Commission has awarded shareholders a portion of gains where shareholders have borne risks and burdens of ownership such as financial, legislative, and market risks.⁴³

41 We agree with the parties that this principle offers useful guidance as we make our determinations here and we find helpful the Commission’s discussion of it in the Centralia Order and dissent. In relevant part, the decision states:

In general, the Commission relies on the broad principle that reward should follow risk and benefit should follow burden. In this particular transaction, both ratepayers and shareholders have and will incur risks and burdens . . .

In determining the fair allocation of the appreciation, we must consider in particular the uncertain future of the electricity industry and new opportunities for both shareholders and ratepayers in a competitive wholesale generation market. In light of that uncertainty and those opportunities, regulators must be cautious not to apply precedent in a way that could inhibit utilities from pursuing opportunities beneficial to both ratepayers and shareholders. We must be flexible enough to allow managers of regulated utilities to exercise sound judgments regarding the restructuring of their portfolios of assets so as to maximize the value of their entire systems, minimize rates, and best serve both ratepayers and shareholders. Thus, the Commission, when

⁴² *Id.* (citing *In re the Matter of the Application of AVISTA CORPORATION for Authority to Sell Its Interest in the Coal-Fired Centralia Power Plant*; *In re the Matter of the Application of PACIFICORP for an Order Approving the Sale of its Interest in (1) the Centralia Steam Electric Generating Plant, (2) the Rate Based Portion of the Centralia Coal Mine, and (3) Related Facilities*; *for a Determination of the Amount of and the Proper Rate Making Treatment of the Gain Associated with the Sale, and for an EWG Determination*; *In re the Matter of the Application of PUGET SOUND ENERGY, INC. for (1) Approval of the Proposed Sale of PSE’s Share of the Centralia Power Plant and Associated Transmission Facilities, and (2) Authorization to Amortize Gain over a Five-Year Period*, Dockets UE-991255, UE-991262, UE-991409 (consolidated), 2nd Supplemental Order (March 6, 2000) ¶ 84) (hereafter “Centralia Order”).

⁴³ PSE Brief ¶ 26 (citing Centralia Order ¶¶ 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 percent of gain realized from sale of one water system and 29 percent of gain realized from sale of another)).

determining the public interest, must look both at the particular asset and also at the broader context in which the asset is being sold.⁴⁴

Among other things, this passage from the Centralia Order establishes the important point that Commission decisions concerning the allocation of proceeds from the sale of utility assets are to some extent contextual. Commissioner Hemstad's partial dissent in Centralia emphasizes this point in a way that we also find instructive:

The equitable principles enunciated in *Democratic Central* [*Comm. v. Wash. Metro Area Transit Comm'n*, 485 F.2d 786 (D.C. Cir. 1973)] have been widely accepted by regulatory commissions and by courts, so much so that the case citation is often not referenced. In applying these principles, some commissions and reviewing courts have allocated a portion of the gain on sale of rate-base assets to shareholders. The better reasoned of these decisions, however, have limited gain-sharing to unusual or extraordinary circumstances, or based the sharing on the 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.⁴⁵

42 PSE's sales of RECs to SCE and PG&E, which are the source of the majority of the proceeds at issue here, present circumstances that are at least unusual, if not extraordinary. Litigation over the California Receivable continued in the courts and at the Federal Energy Regulatory Commission (FERC) for more than eight years. Mr. De Boer testified that PSE "attempted on several occasions to settle [the] complex and highly contentious dispute without success."⁴⁶ Mr. De Boer testified further that PSE developed a strategy in late 2008 to try an alternative approach to resolving the litigation, using "REC sales to entice a settlement that would provide significant value to both customers and PSE."⁴⁷ Mr. De Boer stated that the sales and the prices ultimately agreed upon for the RECs would not have occurred absent the Company's willingness to negotiate this global settlement involving both REC sales and litigation

⁴⁴ Centralia Order ¶¶ 84-85.

⁴⁵ Centralia 3^d Supplemental Order Serving Dissent ¶ 185 (*see supra* fn. 42 for full citation to the underlying Centralia Order).

⁴⁶ DeBoer, Exh. TAD-1T at 7:17.

⁴⁷ *Id.* at 7:18-19.

claims. It is on this basis that PSE contends it would be appropriate that a portion of the proceeds from the sale be used to offset the receivable on PSE's books.

43 Staff argues that for PSE to prevail in its argument that the California receivable is sufficiently linked to the REC benefits to justify allowing the Company to retain \$21 million in REC Proceeds in order to write-off the receivable, PSE must prove that it received more in REC Proceeds than it would have received but for the litigation.⁴⁸ Other parties also make this argument.⁴⁹ These parties all contend that PSE has failed to make such a showing.

44 The evidence pertinent to this argument is decidedly mixed. On balance, however, we find that PSE's sale of three million RECs to SCE and PG&E, from which the bulk of the Company's present and currently anticipated REC Proceeds are derived, was tied to settlement of the California Receivable litigation.⁵⁰ It also appears that the price at which PSE agreed to sell these RECs was sufficiently high to justify the Company's perspective that the sale price included some premium in consideration of PSE abandoning its litigation claims.⁵¹

45 It is not possible, however, to determine more than roughly what might be the amount of that premium. This is principally because of the nascent nature of the REC market and the lack of transparency in this market. PSE furnished such data concerning the market value of RECs as were available to the Company at the time it entered into these transactions, and at the time of our hearing.⁵² We interpret the evidence at hand to mean that the price PSE agreed to accept from SCE represented the high end of the market at the time of the settlement plus a premium for relinquishment of claims. By comparing this price to the high end of the sales prices PSE obtained in California for RECs that are wholly unrelated to the settlement, we find it is reasonable to infer a premium of \$5.60 in the settlement price paid by SCE.⁵³ This results in a total

⁴⁸ Staff Brief ¶ 44 (citing Parvinen, Exh. MPP-1HCT at 16:19 – 20:6).

⁴⁹ See, e.g., ICNU Brief ¶ 21; Public Counsel Brief ¶ 28.

⁵⁰ See, e.g., DeBoer, Exh. TAD-3HCT at 7:3 – 12:14; 16:3 – 17:5.

⁵¹ *Id.*; see also PSE Brief ¶¶ 11 – 15.

⁵² *Id.* These data were designated as confidential or highly confidential under the protective order in this proceeding.

premium on the sale of RECs to SCE of \$11.2 million, which is analogous to gross gain on sale of an asset, as in the *Centralia* case.

46 **Commission Determination:** Taking this estimated \$11.2 million premium as our starting point for purposes of making our final determination on this issue, we first allocate to PSE's customers the direct costs they bore in connection with the California Receivable litigation. As Staff points out, \$4.6 million is the amount of PSE's outside legal fees for litigating the California Receivable; litigation that arose from rate plan era transactions.⁵⁴ Under the rate plan, PSE was supposed to bear all the risks and earn all the benefits of these sorts of transactions and, hence, the associated litigation.⁵⁵ Had PSE prevailed in the litigation, or settled it without regard to the REC sales, it doubtless would have expected to retain for itself 100 percent of any amount it recovered. Yet, by including the costs of the litigation in rates, PSE shifted risks to the ratepayers. As Staff argues, "there is no apparent defensible basis for having ratepayers fund litigation arising from, and based on conduct exclusive to, the rate plan era." Hence, it is now appropriate to require that PSE apply \$4.6 million of the premium it negotiated in selling these RECs as part of the settlement of the California Receivable litigation to offset the legal costs borne by the ratepayers.

47 After reducing the REC sales premium by the \$4.6 million in litigation costs for which PSE's shareholders should be held accountable, we apply the principles from *Centralia*, discussed earlier, that guide us in exercising our discretion to effect a sharing of the remaining \$6.6 million. We find it is equitable to provide for a 50/50 sharing between the Company and its customers. Thus, we will allow PSE to retain \$3.3 million of the REC Proceeds to offset in part the amount of the California Receivable currently carried on the Company's books and, correspondingly reducing the REC deferral account balance by that amount.⁵⁶

⁵³ See DeBoer, Exh. TAD-3HCT at 8:9-11 and De Boer, TR. at 171:23. We make this inference even though the price PSE obtained from SCE appears to have established a new "market price," at least in the short term, as reflected by the subsequent sale to PG&E. We note in this connection, too, the evidence showing the California Public Utilities Commission's determinations that the price paid was within reasonable bounds of the market price. See Exhs. DWS 6 – 15.

⁵⁴ Staff Brief ¶ 61.

⁵⁵ See, *supra*, ¶¶ 40-43.

⁵⁶ We regard this as a unique and non-recurring situation of evolving REC markets that we expect to mature in the future. Given the available evidence of values in the REC market up to the time of the settlement, we have approximated the premium value created through the settlement as

**2. Should REC Proceeds Be Used to Increase Funding
for Low Income Conservation and Renewable Energy
Services?**

48 We turn now to the Joint Parties' (PSE, the Energy Project, RNP, and NVEC)
proposal to dedicate \$20 million to energy efficiency and renewable resource
development programs for low income customers. PSE, speaking for the Joint
Parties, states that the funds would be used for: (1) energy efficiency measures and
energy-related repairs; and (2) renewable energy systems for residential locations.⁵⁷

49 As discussed in the Joint Parties' testimony, PSE would use 80 percent of the
allocated REC Proceeds to make energy-related repairs that are necessary to enable
safe and proper installation of energy efficiency measures in some low-income
homes, and to supplement and enhance existing efforts to install energy efficiency
measures. According to the Joint Parties, one of the greatest obstacles to making low-
income homes more energy efficient is the degraded condition of the structures
themselves. PSE argues that the unmet need for repairs essentially strands the
potential energy conservation that could be captured.⁵⁸

50 PSE argues for the Joint Parties that the REC Proceeds "represent a stable funding
source over a multi-year period" and that "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."⁵⁹

51 PSE proposes to use the remaining 20 percent of REC Proceeds allocated to low
income programs "to further the application of small-scale renewable energy

discussed above. We exercise our discretion to allow PSE to retain a portion of this value, in
part, because we have recognized previously the importance of utilities pursuing strategies that
benefit both shareholders and ratepayers, and we again do so here.

⁵⁷ PSE Brief ¶ 33 (citing Joint Parties, Exh. J-1T at 12:18 – 13:4).

⁵⁸ See Exhibit J-1T (Joint Parties) at 8:9 – 9:12 ("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.").

⁵⁹ PSE Brief ¶ 35 (citing Joint Parties, Exh. J-1T at 15:4-5).

resources to benefit low-income occupants.”⁶⁰ PSE states that these renewable energy resources could initially include solar thermal hot water and photovoltaic systems.⁶¹ PSE argues that using REC Proceeds in this manner “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.”⁶² In addition, the Joint Parties state that the use of REC Proceeds as proposed “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.”⁶³ Finally, the Joint Parties testify that “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.”⁶⁴

52 Staff argues in response to the Joint Parties’ proposals that the record is devoid of “any legitimate justification for tying REC Proceeds to the proposed programs that exclusively benefit low income customers.”⁶⁵ With respect to the Joint Parties’ proposals to use REC Proceeds to fund energy efficiency projects and renewable energy projects to benefit low income customers, Staff argues that all customers should have the same opportunities with no customer class receiving preferential treatment:

When all is said and done, PSE and the low income advocates offer no evidence to challenge Staff’s central point that all ratepayers should benefit from the REC Proceeds, and no group of ratepayers should get an exclusive share. Therefore, the Commission should require PSE to distribute REC Proceeds based on the manner in which the Commission allocates to the customer classes the costs of the renewable resources that generate the RECs.⁶⁶

⁶⁰ *Id.* ¶ 36.

⁶¹ *See* Joint Parties, Exh. J-1T at 9:16-17.

⁶² PSE Brief ¶ 36.

⁶³ *Id.*

⁶⁴ *See* Joint Parties, Exh. J-1T at 9:14 – 10:9.

⁶⁵ Staff Brief ¶ 32.

⁶⁶ *Id.* ¶ 38.

53 Staff argues that while the various public interest purposes the Joint Parties advance in support of their proposals may be important, and that the legislature could authorize the Commission to implement programs such as what the Joint Parties propose to further those public interest purposes, the legislature has not done so. Indeed, RCW 70.164, on which PSE and the other Joint Parties principally rely for their public policy rationale, applies by its terms to the Department of Commerce, and not the Commission. Given the absence of express statutory authority to implement the public policy rationale supporting RCW 70.164, Staff points us to *Jewell v. Utilities and Transportation Commission*, 90 Wn.2d 775, 777, 585 P.2d 1167 (1978), where the court said: “the commission is not the keeper of the social conscience of the citizens of this state.” Rather, Staff argues, the Commission’s responsibility is to regulate “in the public interest, *as provided by the public service laws*.”⁶⁷ Staff concludes:

The public service laws under which the Commission regulates simply do not contain “public interest” factors such as preserving affordable housing, improving the quality of services offered by unregulated low income agencies, enhancing federal programs in which the Commission has no role, or putting people to work repairing deficient housing structures. Because none of these factors are within the jurisdictional concern of the Commission, the Commission should not and cannot consider them.⁶⁸

54 Turning to the critical question of cost effectiveness, Staff argues the Commission should reject the Joint Parties’ proposals whether or not they are cost effective under relevant standards. If the conservation that the REC Proceeds would be used to obtain is cost-effective, Staff argues, the Company “likely will acquire the conservation without REC Proceeds, pursuant to PSE’s statutory obligation under RCW 19.285.040(1) to ‘acquire all available conservation that is cost-effective, reliable and feasible.’”⁶⁹ Staff argues that if the Commission finds the proposed low income programs cost effective, there is no reason to use REC money to fund what

⁶⁷ Staff Brief ¶ 78 (citing RCW 80.01.040(2) (emphasis supplied by Staff)).

⁶⁸ *Id.* ¶ 86.

⁶⁹ *Id.* ¶ 90.

PSE would otherwise do. On the other hand, the Commission should reject the low income proposal if it will not capture cost-effective conservation, “because using REC Proceeds to fund non-cost-effective conservation is an inappropriate, wasteful use of precious ratepayer dollars.”⁷⁰

- 55 Having made the argument that the Joint Parties’ proposals should be rejected either way, Staff goes on to argue that neither the energy efficiency measures the Joint Parties seek to fund, nor the renewable projects they propose to undertake are, in fact, cost effective. As to energy efficiency, Staff argues:

Under PSE’s tariff, a conservation measure must pass the total resource test [TRC test] and the utility cost test [UC test]. PSE may only consider “non-energy benefits” under the TRC test. Consequently, with a .94 benefit/cost ratio, the proposed low income programs fail the UC test and therefore, they are not cost-effective.⁷¹

- 56 PSE does not address the UC test. PSE argues, however, that PSE’s Electric Tariff Schedule 83 provides a TRC benefit/cost standard of 0.667 for low-income conservation programs.⁷² The low-income conservation programs proposed by the Joint Parties have a TRC of 0.94, before consideration of non-quantifiable benefits, and thus meet the cost-effectiveness standard approved by the Commission.⁷³

- 57 PSE argues additionally that:

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

⁷⁰ *Id.* ¶ 91.

⁷¹ *Id.* ¶ 92 (internal citations to Exh. J-8 at 5, PSE Tariff G, Schedule 83, ¶ 7: “a Measure must reasonably be expected to satisfy the Total Resource Cost Test and the Utility Cost Test”; Parvinen, TR. 204:15-24; Exh. J-8 at 3 and the page after 3 (which is unmarked), PSE Tariff G, Schedule 83, ¶¶ 4p and 4aa; Exh. J-4; Parvinen, TR. 204:15 – 205:13)).

⁷² PSE Brief ¶ 41 (citing Exh. J-8 at 6).

⁷³ *See* Joint Parties, Exh. J-2T at 4:14-16 and 4:19 – 5:3; *see also* Exh. J-4.

realized unless the associated repairs are funded. The funding of the proposed repairs is a prerequisite to the additional conservation.⁷⁴

As PSE points out, Mr. Parvinen testified in this connection that when PSE's conservation program is viewed as "a whole package . . . there are some specific elements that if they stood alone would not be cost effective . . .," yet, the Commission has instead looked at the "overall package."⁷⁵ This implies that the Commission should not over-emphasize the importance of any single criterion of cost effectiveness but, rather, should take a broader view of the question. When viewed from such a perspective, the evidence favors a finding that additional funding could result in PSE capturing cost-effective conservation that might otherwise be stranded by a lack of funding for structural repairs needed to gain the incremental conservation savings.

58 As to the proposed funding of renewable projects for low income customers, however, there is no evidence in the record to support a finding that the proposed renewable programs are cost effective by any measure. Indeed, quite the opposite is true. As Staff argues:

The Panel confirmed the proposed low income renewable program is not cost effective: "There is no cost-effectiveness test that I know of that is applied to solar installations" because solar facilities "have above market costs." The record shows this testimony to be somewhat of an understatement. According to the Panel, the proposed low income solar program contemplates a cost of \$7 per watt, for a whopping \$7,000 per megawatt.⁷⁶

⁷⁴ PSE Brief ¶ 44.

⁷⁵ *Id.* ¶ 46 (citing and quoting Parvinen, TR. 196:16-197:2; citing also *WUTC v. Puget Sound Energy, Inc.*, Docket 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.)).

⁷⁶ *Id.* ¶ 93 (internal citations to internal citations to Gravatt, TR. 79:14-17 and 90:12-18; Parvinen, TR. 207:1-5; and noting: "We apologize for our arithmetic failure at TR 206:6-7; it was getting late."). This calculation apparently continues to be elusive. In fact, at \$7 per watt, the correct amount for installation costs is about \$7,000 per kilowatt, which is considerably above market compared to other possible resources.

While the Joint Parties advance various other rationales for allocating funds to low income renewable projects, these neither individually nor collectively are adequate to overcome the evidence showing that such a use of funds would be wasteful from an economic perspective, and inconsistent with its long-term resource plan.

59 **Commission Determinations:** Our decision concerning the Joint Parties' proposals to allocate \$16 million to low income energy conservation programs and \$4 million to low income renewable facilities focuses on the same central point that we found determinative in connection with PSE's proposal to use \$21 million in REC Proceeds as a credit against the California Receivable. There, we determined fundamentally that the REC benefits should go to all of PSE's retail ratepayers, because they are the ones burdened with the responsibility of paying rates sufficient for PSE to recover all of the costs of the resources that generate the RECs and CFIs, including a reasonable return on the Company's investment. That fundamental determination applies here with equal force. The costs of the assets that produce the RECs are borne equally by all residential customers. Benefits from the RECs should, as a fundamental proposition, be returned to customers on the same basis.

60 It is a separate question, however, whether ratepayer funds derived from RECs that were not considered in the Company's most recent general rate proceeding⁷⁷ should be used to allow PSE to fulfill its statutory responsibility to capture all cost-effective conservation. Because the REC Proceeds presently available represent an unallocated pool of revenue, a portion of which can be devoted to such a purpose, we find it appropriate to exercise our discretion in this matter by using part of the currently available REC funds to enhance or accelerate the Company's acquisition of additional cost-effective conservation in the 2010 – 2011 program period that might otherwise be stranded by a lack of funding. We emphasize that the basis for our doing so turns on two facts:

- PSE has a statutory obligation under RCW 19.285.040(1) to "acquire all available conservation that is cost-effective, reliable and feasible."

⁷⁷ See *WUTC v. PSE*, Dockets UE-090704 and UG-090705 (consolidated), Order 10 Granting Motion to Strike Testimony [concerning RECs] (January 8, 2010).

- Current program funding is inadequate to capture cost-effective, reliable and feasible conservation that is stranded due to the need for repairs to structures where such conservation can be realized.

61 Although the numbers in the Joint Parties' testimony do not match exactly the numbers in Exhibits J-4 and J-6, it appears that with additional program funding of \$2.285 million per year, or \$4.57 million for the two-year, 2010 – 2011 program period, an additional 850,598 kWh to 1,654,538 kWh in conservation savings can be achieved with a TRC of 0.94.⁷⁸ We accordingly determine that PSE should be authorized to use \$4.57 million taken from the REC Proceeds deferral account established by this Order to increase the funding of its low income energy efficiency (*i.e.*, conservation) for the 2010 – 2011 program period. We determine additionally that PSE should be required to file a report within six months following the end of the current program period detailing its expenditures and the conservation savings achieved. The report will be subject to Staff's audit. The report and Staff's audit must be presented to the Commission at an open meeting as a "subsequent filing" in accordance with WAC 480-07-885.

62 Finally, because there is no evidence showing that it would be cost effective to allocate funds to low income renewable projects, we reject the Joint Parties proposal to use approximately \$4 million of REC Proceeds for this purpose.

E. Accounting and Rate Treatment of Remaining REC Proceeds

1. Proceeds Received Through November 30, 2009

63 Confidential evidence in our record shows that aside from the \$7.9 million in REC Proceeds, the discretionary disposition of which we discuss in the preceding sections of this Order, PSE had received significant additional amounts through November 30, 2009. Consistent with our determinations above, we will require PSE to disburse these funds to ratepayers in the form of an immediate bill credit or bill credits paid over a relatively brief period of time. It is unclear from our record exactly how this should be done so soon after the implementation of PSE's recently approved increase in electric rates, authorized in the Commission's Final Order in Docket UE-090704. Nor is it clear what rate of interest should be applied to capture the time value of this

⁷⁸ See Exh. JT-2 at 4:3-16, Exh. J-4 at 4 and Exh. J-6 at 2 – 3.

money, some of which PSE has held on its books for a number of years. Thus, we find a need to supplement our record so the Commission can make final determinations concerning these questions.

64 **Commission Determination:** We determine that PSE and the other parties should be required to present either an agreed proposal or individual proposals concerning what interest rate should be applied to current and future REC balances and how these proceeds received through November 30, 2009, from the sale of RECs should be credited to customers in the near term. In general, we envision this could be in the form of a one-time bill credit or in a series of bill credits over as many as 12 months corresponding roughly to the rate year in Docket UE-090704, which will end on April 7, 2011. Other options may, however, be more appropriate.

65 To implement our requirement that one or multiple proposals concerning the appropriate rate of interest and the crediting method must be presented with supporting evidence and argument, we establish a June 10, 2010, as the date by which parties must file their proposal(s) via appropriate motion(s).

2. Future REC Proceeds

66 As to REC Proceeds received by PSE after November 30, 2010, Staff proposes to treat the proceeds as a regulatory liability.⁷⁹ Kroger also proposes a regulatory liability method.⁸⁰ Under the regulatory liability method, PSE would book the REC Proceeds in a regulatory liability account, which will be used to reduce PSE's rate base for ratemaking purposes. PSE, under Staff's proposal would amortize the balance in the account over ten years, to give customers a long-term benefit of the unamortized balance.⁸¹ Kroger's suggestion of a rolling, three-year amortization is not substantially different from Staff's proposal, but would shorten the period when customers will see benefits in rates from these long-term resources.

67 We have considered Public Counsel's recommendation that we return future REC Proceeds to ratepayers through a mechanism similar to that used for production tax

⁷⁹ Staff Brief ¶¶ 98 – 100.

⁸⁰ Higgins, Exh. KCH-1T at 9:4-6.

⁸¹ Parvinen, Exh. MPP-1HCT at 3:14-4:18 and 9:4-5.

credits (PTC) arising from wind generation.⁸² Public Counsel states this would require adjustments and a true-up once every 12 months.⁸³ We have also considered ICNU's proposal that all net revenue simply be flowed back to customers through a separate tariff rider, in the same manner that the costs of renewable facilities providing the REC revenue are assigned in rates.⁸⁴ Under Public Counsel's and ICNU's recommended approaches, REC revenues would flow back to ratepayers as PSE receives them.

68 **Commission Determination:** We find that the Regulatory Liability method proposed by Staff is an equitable means to implement our determination that all REC revenues should be returned to the ratepayers who pay rates to cover all of the costs of the related resources, in the same manner in which rate classes are assigned cost responsibility for those resources and that it produces the most uniform results in terms of ratepayer impacts.⁸⁵ Public Counsel's and ICNU's proposals could result in rate volatility and confusion for customers. Mr. De Boer testified that the mechanics of Staff's proposed method are acceptable to PSE.⁸⁶ Balances in the regulatory liability account will accrue interest at the rate we fix based on our determination following the receipt of an agreed proposal, or alternative proposals from the parties, as discussed above.

FINDINGS OF FACT

69 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

70 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules,

⁸² Public Counsel Brief ¶ 48.

⁸³ *Id.* ¶ 49.

⁸⁴ ICNU Brief ¶ 52 (citing Schoenbeck, Exh. DWS-1HCT at 11:11 – 12:8)

⁸⁵ Parvinen, Exh. MPP-1HCT at 8:15-23.

⁸⁶ De Boer, Exh. TAD-3HCT at 19:13-19; TR. 110:1-17.

regulations, practices, and accounts of public service companies, including electrical and gas companies.

- 71 (2) Puget Sound Energy, Inc., (PSE) is a “public service company” and an
“electrical company” as those terms are defined in RCW 80.04.010 and as
those terms otherwise are used in Title 80 RCW. PSE is engaged in
Washington State in the business of supplying utility services and
commodities to the public for compensation.
- 72 (3) PSE's calculations of net proceeds from REC and CFI sales are unclear and
require clarification via detailed accounting and review.
- 73 (4) PSE’s retail customers bear all reasonable operating costs, and provide a return
of and return on the Company’s investments in resources that produce RECs
and CFIs.
- 74 (5) PSE obtained a total premium of \$11.2 million on the sale of two million
RECs to SCE in connection with settlement of protracted litigation over the
California Receivable. This premium is analogous to gross gain on sale of an
asset.
- 75 (6) \$4.6 million of the premium PSE negotiated in selling these RECs as part of
the settlement of the California Receivable litigation should be used to offset
the legal costs borne by the ratepayers. The balance of the premium, \$6.6
million, should be divided equally between PSE and its customers.
- 76 (7) Additional low income conservation funding of \$4.57 million could result in
PSE capturing cost-effective conservation during 2010 and 2011 that might
otherwise be stranded by a lack of funding for structural repairs needed to gain
the incremental conservation savings.
- 77 (8) There is no evidence in the record to support an argument that the renewable
programs proposed by the Joint Parties would be cost effective by any
measure.
- 78 (9) The Commission requires additional evidence and argument to determine what
interest rate should be applied to the REC Proceeds deferral balances.

- 79 (10) The Commission requires additional evidence and argument to determine the mechanism for crediting customers with the net REC Proceeds on PSE's books as of November 30, 2009, less the \$7.9 million in proceeds that will be allocated to PSE (*i.e.*, \$3.3 million) and used to fund low income conservation (*i.e.*, \$4.6 million).
- 80 (11) The Regulatory Liability method proposed by Staff is an equitable means to implement the Commission's determination that all REC revenues should be returned to the ratepayers who pay rates to cover all of the costs of the related resources, in the same manner in which rate classes are assigned cost responsibility for those resources and that this produces the most uniform results in terms of ratepayer impacts.

CONCLUSIONS OF LAW

- 81 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:
- 82 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 83 (2) PSE should be required to provide a detailed accounting of its calculations of net proceeds of REC and CFI sales booked on or before November 30, 2009, and its accounting worksheets should be reviewed for reasonableness.
- 84 (3) PSE's retail customers should share the proceeds from the sale of the RECs and CFIs on the same basis as the Commission allocates the costs of these resources in the rate making process.
- 85 (4) PSE should be authorized to retain \$3.3 million of the REC Proceeds to offset in part the amount of the California Receivable currently carried on the Company's books and, correspondingly reducing the REC deferral account balance by that amount.

- 86 (5) PSE has a statutory obligation under RCW 19.285.040(1) to “acquire all available conservation that is cost-effective, reliable and feasible.” PSE should be authorized and required to use REC funds to increase funding for the current (*i.e.*, 2010 – 2011) low income conservation program period by \$4.57 million.
- 87 (6) PSE should be required to file a report within six months following the end of the current low income conservation program period detailing its expenditures and the conservation savings achieved. The report should be subject to Staff’s audit.
- 88 (7) PSE and other parties should be afforded an opportunity, and PSE should be required, to present additional evidence and argument in support of their proposal(s) concerning the interest rate that should be applied to the REC Proceeds deferral balances.
- 89 (8) PSE and other parties should be afforded an opportunity, and PSE should be required, to present additional evidence and argument concerning the proposed mechanism(s) by which customers should be given a bill credit using all REC and CFI proceeds booked as of November 30, 2009, less \$7.9 million that the Commission exercises its discretion to devote to special uses under the terms of this Order.
- 90 (9) PSE should be required to book all REC Proceeds in a regulatory liability account, which will be used to reduce PSE’s rate base for ratemaking purposes. PSE will amortize the balance in the account over ten years.
- 91 (10) The Commission Secretary should be authorized to accept by letter, with copies to all parties to this proceeding, such filing(s) as are required to comply with the requirements of this Order.
- 92 (11) The Commission should retain jurisdiction over the subject matters and the parties to this proceeding to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 93 (1) PSE will include as part of its compliance filing(s) in this proceeding a full accounting of its calculation of net proceeds from the sales of RECs and CFIs through November 30, 2009, with supporting narrative explanation. PSE will make this filing within 10 days following the date of this Order. Parties will have an opportunity to challenge PSE's determination of net proceeds within 5 days following the Company's compliance filing and the Commission will give notice of and conduct such additional process as may be necessary to resolve any dispute.
- 94 (2) PSE is authorized to use deferral accounting, treating REC Proceeds as a regulatory liability that will earn interest until fully amortized.
- 95 (3) Amounts booked to the REC regulatory liability account as of November 30, 2009, are to be used as follows:
- PSE will retain \$3.3 million of the REC Proceeds to offset in part the amount of the California Receivable currently carried on the Company's books and, correspondingly reducing the REC deferral account balance by that amount.
 - PSE is authorized and required to use REC funds to increase funding for the current (*i.e.*, 2010 – 2011) low income conservation program period by \$4.57 million in order to capture additional cost-effective conservation. PSE is required to file a report within six months following the end of the current program period detailing its expenditures and the conservation savings achieved. The report will be subject to Staff's audit. The report will be in the form of a "subsequent filing" in accordance with WAC 480-07-885. Staff's audit must be presented to the Commission at an open meeting as soon as practicable following the Company's subsequent filing.
 - The remaining balance of REC Proceeds as of November 30, 2009, is to be credited to ratepayers following a method that the Commission

will determine following the receipt of additional evidence and argument following the process outlined in the body of this Order.

- 96 (4) All REC Proceeds received by PSE after November 30, 2009, are to be booked to a regulatory liability account which will be used to reduce PSE's rate base for ratemaking purposes. PSE will amortize the balance in the account over ten years.
- 97 (5) The Commission Secretary is authorized to accept by letter, with copies to all parties to this proceeding, filings that comply with the requirements of this Final Order.
- 98 (6) The Commission retains jurisdiction to effectuate the terms of this Final Order.

Dated at Olympia, Washington, and effective May 20, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION



JEFFREY D. GOLTZ, Chairman



PATRICK J. OSHIE, Commissioner



PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.