

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

In the Matter of the Amended	)	DOCKET UE-070725
Petition of	)	
	)	
PUGET SOUND ENERGY, INC.	)	ORDER 05
	)	
For an Order Authorizing the Use of	)	DENYING PSE PETITION FOR
the Proceeds from the Sale of	)	RECONSIDERATION; DENYING
Renewable Energy Credits and	)	ENERGY PROJECT PETITION FOR
Carbon Financial Instruments	)	RECONSIDERATION; GRANTING IN
	)	PART STAFF PETITION FOR
.....	)	RECONSIDERATION

**MEMORANDUM**

*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 (collectively “REC proceeds”), and to use these revenues in specific ways identified in the Amended Petition. PSE filed testimony on its own behalf and jointly filed additional testimony with the Energy Project, the Northwest Energy Coalition, and the Renewable Northwest Project<sup>1</sup> concerning one aspect of the Amended Petition. The Commission’s regulatory staff (“Commission Staff” or “Staff”), the Public Counsel Section of the Attorney General’s Office (“Public Counsel”), and several intervenors filed response testimonies on January 29, 2010. PSE and the Joint Parties filed rebuttal testimonies on February 19, 2010. The Commission conducted hearings on March 5, 2010, and received briefs from the parties on March 17 and 18, 2010.

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<sup>1</sup> We refer collectively in this Order to PSE, Northwest Energy Coalition, the Renewable Northwest Project and the Energy Project as the “Joint Parties.”

- 2 The Commission entered Order 03 - Final Order Granting, in Part, and Denying, in Part, Amended Petition; Determining Appropriate Accounting and Use of Net Proceeds from the Sales of Renewable Energy Credits and Carbon Financial Instruments, on May 28, 2010.
- 3 On June 1, 2010, PSE, Commission Staff and the Energy Project filed their respective petitions for reconsideration, advocating various modifications to Order 03. The Commission gave notice that it would accept answers pursuant to WAC 480-07-850(3). PSE, Staff, Public Counsel, the Energy Project, the Industrial Customers of Northwest Utilities (ICNU) and the Northwest Energy Coalition (NWECC) filed answers on June 16, 2010.
- 4 The Commission reopened the record and gave notice of further process on June 29, 2010. Pursuant to its notice, the Commission conducted additional hearings on August 17, 2010.
- 5 **PARTY REPRESENTATIVES.** Sheree Strom Carson, Perkins Coie, Bellevue, Washington, represents PSE. Sarah A. Shifley, Assistant Attorney General, Seattle, Washington, represents Public Counsel. Robert D. Cedarbaum, Senior Assistant Attorney General, Olympia, Washington, represents Commission Staff.<sup>2</sup>
- 6 S. Bradley Van Cleve and Irion Sanger, Davison Van Cleve, Portland, Oregon, represent 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).<sup>3</sup> Ronald L. Roseman, Attorney, Seattle, Washington, represents the Energy Project. David S. Johnson, Attorney, represents NWECC.

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<sup>2</sup> 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.*

<sup>3</sup> The Federal Executive Agencies appeared through Mr. Furuta, but elected not to petition for intervention.

Megan Walseth Decker, Senior Staff Counsel substituted for Glenn Amster, Lane Powell PC, Seattle, Washington, representing Renewable Northwest Project (RNP).<sup>4</sup>

- 7 **COMMISSION DETERMINATIONS:** The Commission denies PSE's petition, denies the Energy Project's petition, and grants in part Staff's petition. In Order 03, the Commission authorized PSE's expenditure of \$4.57 million in REC proceeds to capture additional cost-effective conservation during the current Company's 2010 – 2011 low-income conservation program period. Considering the various petitions for reconsideration and answers, new evidence, and the parties' arguments during its hearing on August 17, 2010, the Commission determines that Order 03 should be modified by reducing the amount of REC proceeds to be set aside for low-income conservation. New evidence shows that \$2.285 million should be more than sufficient to underwrite the capture of significant cost-effective low-income conservation that would otherwise be stranded during 2011, the only year in the current program period during which the Joint Parties contend they can make use of such funds.

### **MEMORANDUM**

#### **I. Order 03**

- 8 In Order 03, the Commission granted 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 Commission determined that the deferred account is to be treated as a regulatory liability on PSE's books that would accrue interest at a rate to be determined during the compliance phase of this proceeding.
- 9 The Commission denied PSE's request for authority to use approximately \$21 million of the REC 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. However, the Commission exercised its discretion to allow the Company to take from the deferred account the sum of \$3.3 million for this purpose. The Commission determined this amount represents a reasonable sharing of the premium

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<sup>4</sup> Ann E. Gravatt, Portland, Oregon, also entered an appearance for RNP.

PSE obtained from the sale of renewable energy credits to Southern California Edison as part of a settlement agreement that resolved the litigation over the disputed amounts.

- 10 The Commission also denied PSE's request for authority to dedicate approximately \$20 million of the REC proceeds to fund low income energy efficiency and renewable energy projects over approximately seven years. However, the Commission again exercised its discretion and allowed the Company to allocate approximately \$4.6 million from the deferred account to fund additional cost-effective low income energy efficiency during the current program period. The Commission ordered 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.<sup>5</sup> The Commission also determined the accounting and rate treatment for all other REC proceeds should be booked to a regulatory liability account, which will be used to reduce PSE's rate base for ratemaking purposes in future proceedings.

## **II. Petitions for Reconsideration**

### **A. Puget Sound Energy, Inc.**

- 11 PSE requests reconsideration of two items:
- The Commission's determination that the regulatory liability account in which the REC proceeds received after November 30, 2009, are to be booked will both be deducted from rate base and accrue interest.
  - The Commission's application of the \$5.60 premium to two million RECs sold to SCE, but not the one million RECs subsequently sold to PG&E.
- 12 PSE argues accrual of interest on the REC proceeds, as provided in Order 03, is contrary to a principle set forth in previous cases, including PSE's most recent general rate case (GRC), Dockets UE-090704 and UG-090705. This argument refers specifically to the Commission's determination in the recent GRC that PSE is not

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<sup>5</sup> We discuss below that under this Order on the petitions for reconsideration, the balance in the deferred account to be paid to customers as a bill credit will be reduced by about \$5.6 million instead of \$7.9 million.

entitled to recover carrying costs on the deferred costs associated with its acquisition of Mint Farm.

- 13 PSE's second argument is based on the Company's interpretation of certain language in Order 03. Specifically, PSE argues the Commission "overlooks" in paragraph 45 the Company's sale of one million RECs to PG&E when calculating both the premium amount and the total amount of REC Proceeds to be retained by PSE, despite the Commission's determination in paragraph 44 of the order that "PSE's sale of *three million* RECs to SCE and PG&E . . . was tied to the settlement of the California Receivable" and "the price . . . included some premium."<sup>6</sup>

#### B. Answers

- 14 Staff argues the Commission should grant PSE's Petition to the extent of clarifying that Order 03 requires PSE to accrue interest on REC balances prior to the time the Commission includes them in rate base for ratemaking purposes. Staff argues further that once the Commission includes REC amounts in rate base, PSE should cease accruing interest on those amounts.
- 15 Staff distinguishes the Commission's determination in PSE's recent GRC denying the Company recovery of carrying costs on amounts accruing in a statutorily authorized deferral account following PSE's acquisition of Mint Farm. Staff points out that the applicable statute<sup>7</sup> allowed PSE to accrue and defer the cost of capital, among other things, before the Commission included the plant in rate base. Thus, PSE deferred Mint Farm capital costs using the Commission-authorized rate of return. The Commission rejected PSE's proposal that it be allowed to collect from ratepayers yet additional carrying costs on the Mint Farm plant balances, pending the plant's inclusion in rate base.<sup>8</sup>

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<sup>6</sup> PSE Petition ¶¶ 8 - 9 (citing Order 03 ¶ 44 (emphasis added by PSE)).

<sup>7</sup> RCW 80.80.060(6).

<sup>8</sup> *Utilities & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-090704 & UG-090705, Order 11 ¶¶ 237 - 246.

- 16 Here, Staff argues, PSE has not accrued any interest, carrying costs, or return on REC balances. Thus, the question to ask is whether PSE should accrue interest on REC balances *before* the Commission includes them in rate base for rate making purposes. Staff concludes the answer is yes, as required by Order 03. Staff notes that there appears to be no dispute that PSE should not accrue interest on REC amounts once the Commission includes those amounts in rate base for rate making purposes.
- 17 Public Counsel argues similarly that Order 03 provides that interest will accrue on the regulatory liability account balance from the time that proceeds are booked to the account and until the account balance is applied to rate base.<sup>9</sup> Once the amounts are reflected in rate base, they will no longer be accruing interest because they will no longer be held in the deferral account. Thus, Public Counsel concludes, the REC proceeds will not at any time both accrue interest and reduce PSE's return on rate base.
- 18 Public Counsel argues, in addition, that ratepayers should be compensated for the time value of REC proceeds from the time PSE receives the proceeds until they are deducted from rate base. If no interest accrues on the regulatory liability account balance, PSE would benefit unjustly from the time-value of the REC proceeds.
- 19 ICNU, analogizing to the treatment of production tax credits and calling it an "alternative" result, nevertheless argues to the same effect as Staff and Public Counsel that the Commission should order that interest accrue on the proceeds until the revenues actually reduce rate base in a rate proceeding. ICNU adds the argument that the appropriate carrying charge should be the Company's authorized weighted cost of capital (*i.e.*, overall return).<sup>10</sup>
- 20 Turning to PSE's argument concerning calculation of the premium amount found by the Commission to be the appropriate starting point to determine what share of the REC proceeds PSE would be allowed to retain for itself, Staff argues the Commission should deny the Company's petition. Staff argues that "PSE is simply wrong to claim

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<sup>9</sup> Public Counsel Answer ¶ 2 (citing Order 03 ¶ 68, stating, "[b]alances in the regulatory liability account will accrue interest at the rate we fix").

<sup>10</sup> Except for ICNU's argument, we have not yet heard from the parties their collective, or competing, proposals concerning what interest rate should apply. We expect to resolve that question in the near term, as provided by the ordering paragraphs in this Order.

the Commission committed an ‘oversight’ by calculating a premium over market only for PSE’s sale of RECs to SCE, when the facts show the Commission was being insightful.”<sup>11</sup> Staff points out that Order 03 describes the price PG&E paid PSE for RECs as a market price.<sup>12</sup> Staff argues it is obvious that if PG&E paid market price for RECs, there can be no premium over market price related to that sale.

21 Public Counsel argues that, contrary to PSE’s argument, paragraph 44 of Order 03 does not state that *all* REC sales included a premium. Instead, Order 03 states only that the sales to both SCE and PG&E were made “in connection” with the settlement of the California Receivable litigation, a fact regarding the timing and circumstance of the sales that no party disputed. Public Counsel states that while the Commission also said in paragraph 44 that the sale price was high enough “*to justify from the Company’s perspective* that the sale price included some premium,”<sup>13</sup> this only acknowledges that PSE could have formed such a perspective. Such acknowledgement, Public Counsel argues, is not tantamount to acceptance of the perspective.

22 Public Counsel argues that paragraph 45 in Order 03 is consistent with paragraph 44:

In paragraph 45 and the accompanying footnotes, the Commission lays out its finding that only PSE’s sales to SCE included a premium. The Commission clearly states: “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.” The Commission made clear that the sale to PG&E was made at market price, that is, without a premium. In the Final Order, the Commission explained that the preceding sales to SCE set a market price that was roughly equal to the price later obtained by PSE from PG&E: “the price PSE obtained from SCE appears to have

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<sup>11</sup> Staff Answer ¶ 12.

<sup>12</sup> Staff Response to PSE Petition for Reconsideration ¶ 12 (citing Order 03 at 19, footnote 53).

<sup>13</sup> Public Counsel Answer ¶ 5 (quoting and adding emphasis to Order 03 ¶ 44).

established a new ‘market price,’ at least in the short term, as reflected by the subsequent sale to PG&E.”<sup>14</sup>

23 ICNU makes arguments that are similar to those of Staff and Public Counsel, recommending that the Commission deny PSE’s petition on this point, but suggesting that the Commission clarify the distinction between SCE and PG&E sale proceeds.

24 **COMMISSION DETERMINATION:** We deny PSE’s Petition for Reconsideration on both points. It is appropriate, as provided in Order 03, that ratepayers have the benefit of interest during the period PSE holds these ratepayer funds as a regulatory liability in a deferral account. Such treatment is not contrary to and, indeed, is symmetrical with the treatment PSE received for the account balances in its Mint Farm regulatory asset deferral account in the recent GRC. In the case of Mint Farm, PSE earned a return on equity on its capital investment in Mint Farm from the time it initiated deferral accounting pursuant to statute, thus increasing the deferral account balances the Commission ultimately allowed in rates. In like manner, PSE’s customers are entitled to interest on the REC proceeds. PSE holds and has the use of this money, and it will not be returned to ratepayers until the deferral account balances are taken into account in setting rates, which will begin with the Company’s next GRC.<sup>15</sup>

25 What the rate of interest should be is a separate question to which only ICNU spoke in this round of pleadings. We reiterate that the parties should develop an agreed proposal or alternative proposals as to what carrying charge should apply, as Order 03 indicates these will be the basis for determining the appropriate level for the deferral balance.

26 On the question of how much of the REC proceeds the Company should retain under the principles established for their treatment by Order 03, the Company’s interpretation of the order is incorrect. Taken as a whole, Order 03 seems clear enough in this regard. The SCE sale, which was part of the settlement, included a premium and established a new “market price.” The subsequent PG&E sale was at

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<sup>14</sup> *Id.* ¶ 6.

<sup>15</sup> The exception to this statement is that REC proceeds from periods prior to December 1, 2009, will be returned to ratepayers, with interest, as a bill credit, except for the approximately \$5.6 million otherwise specifically allocated under the terms of this Order.



the new market price. While both sales are fairly described as being “connected to” the settlement, only one was a *product of* the settlement. And, while we can understand the Company’s perspective that both sales included a premium, the Commission’s perspective simply is different. In our view, once the SCE sale was consummated, it established a new market price point in the California REC market and that is what PG&E agreed to pay. Hence, the Commission does not recognize a premium over market in the PG&E sale.

**C. The Energy Project Petition and Answer; Staff Petition and Answer;  
PSE Answer<sup>16</sup>**

- 27 Order 03 authorized PSE to expend \$4.57 million from the REC proceeds to fund the capture of additional cost-effective conservation in the 2010-2011 low-income conservation program period. The Energy Project asks the Commission to revise Order 03 by extending the date by which these funds must be spent to December 31, 2013. The Energy Project argues that extending the date will stabilize the funding of programs from year to year and create efficiencies by avoiding the need to staff up in one year, letting the staff go in the following year, and then having to re-hire and re-train additional staff in the future. The Energy Project says “an additional reason to extend the time frame is that low income agencies received unexpectedly \$2,000,000 from an Enron case designated by the Attorney General’s office to be used for low income ratepayers but it must be spent by the end of 2010.”<sup>17</sup>
- 28 Both Staff’s Petition for Reconsideration and its Answer to the Energy Project’s petition bear on the organization’s arguments. Staff, in its petition, first simply reiterates the argument it made on brief that the Commission’s exercise of its discretion to allocate REC proceeds to low income conservation programs is constrained because to do so constitutes an “undue preference,” which is prohibited by statute.

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<sup>16</sup> NWEAC also filed a brief answer to both Staff and the Energy Project’s petitions, opposing Staff and supporting the Energy Project. However, the NWEAC answer is not substantive and is not discussed below.

<sup>17</sup> Energy Project Petition ¶ 4. We accept the figure of \$2.1 million, shown by the record to be a more accurate approximation, or exact statement, of the amount. See TR. 234:20-23 (Sieg).

- 29 Staff's second argument is grounded in its allegation that PSE and the low income advocates failed to exercise their "duty to disclose to the Commission the material fact of this \$2.1 million funding [from the Enron settlement] for repairs to low income dwellings."<sup>18</sup> Staff states and explains the basis for its belief that the Joint Parties were aware of this funding source by December 7, 2010, "well before they filed rebuttal testimony (February 18, 2010), and well before hearing (March 5, 2010)."<sup>19</sup> Yet, Staff argues, these parties "testified that funds for repairing low income dwellings prior to weatherization were "inadequate," "diminishing," "subject to increasing competition from other purposes," and in general, "insufficient to address the need."<sup>20</sup> Staff argues the Commission should at least offset the \$4.57 million amount by the full amount of Enron settlement monies PSE has received or will receive during the period 2009-2011. Staff notes that the Commission has discretion to reject the \$4.57 million allocation entirely, based on the apparent non-disclosure of material facts by PSE and the low income advocates.
- 30 Staff expands on this line of argument in its answer to the Energy Project's petition. Staff argues that because the low income advocates knew \$2 million was available to them from the Enron settlement well before they testified in this docket, their testimony at hearing that existing funding sources are "inadequate," "diminishing," "subject to increasing competition from other purposes," and that the current program's \$300,000 level for funding for energy-related repairs "is quickly exhausted" is impeached.<sup>21</sup>
- 31 Staff argues, in addition, that the low income advocates' request to extend the time over which REC funds can be expended undermines the basis for the Commission's grant of \$4.57 million in REC proceeds: to address low income conservation that would otherwise be "stranded" due to lack of funding during the 2010-2011 period. Staff states it makes sense for the Commission to synchronize the current 2010-2011 program funding and the \$4.57 million grant of REC proceeds, because no one knows what the level of program funding will be in 2012-2013, whether there will be any stranded conservation during that period or, if so, how much. Staff concludes "it not

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<sup>18</sup> Staff Petition for Reconsideration ¶ 9.

<sup>19</sup> *Id.* ¶ 8.

<sup>20</sup> *Id.* ¶ 7.

<sup>21</sup> Staff's Response to the Energy Project's Petition for Reconsideration, ¶ 7.

only would contradict Order 03, but it would be unwise for the Commission to commit REC funds to a later period.”<sup>22</sup>

- 32 In its Answer to Staff’s Petition for Reconsideration, the Energy Project objects strenuously to Staff’s allegation that PSE and the low income advocates failed to disclose a material fact. The gist of this argument appears to be that the payment from Enron, albeit known to the parties, was not a material fact until the Commission’s Order 03 rejected their proposal for multi-year funding. The Energy Project argues that even with the additional Enron funding, the record shows that low-income programs are underfunded, and extra money for low-income energy efficiency measures will benefit more low-income customers.
- 33 PSE argues in its Answer to Staff’s petition that the Joint Parties did not fail to disclose any material facts. PSE acknowledges that the Enron funds were never expressly identified, but says the Joint Parties never purported to list all sources of existing low income weatherization funding, nor were they asked to do so in this proceeding. PSE says the record makes clear that when low income repair funding is viewed over the seven-year period proposed by the Joint Parties, the funds for repairs are inadequate, diminishing, and insufficient, even with the \$2.1 million funding from the Enron settlement that must be used by December 31, 2010. Thus, according to PSE, the evidence is consistent with the Joint Parties’ advocacy.
- 34 PSE disputes Staff’s argument that the funding provided under Order 03 is no longer necessary at least to the extent of the Enron funds. PSE states the Enron funding source is not available after 2010 and will not address low income funding deficiencies beyond the next six months. PSE states that rather than alleviating the need for low income funding, as Commission Staff claims, monies such as the Enron funds were actually a fundamental reason for the Joint Parties’ request that funds be spread out over seven years. With Order 03, which requires the low income agencies to expend \$4.57 million in approximately 18 months, the problem with expending a large infusion of money over a short period is exacerbated.

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<sup>22</sup> *Id.* ¶ 9.

35 While we do not find any nefarious intent on the part of the Joint Parties in not expressly disclosing the Enron funds earlier, the availability of those funds during 2010 is a material fact that takes on heightened significance in the context of Order 03. Recognizing this, the Commission reopened the record and conducted additional hearings to learn more about funding sources for PSE's low-income conservation program, expenditures for repairs and conservation measures, and program administration. In hearing proceedings on August 17, 2010, we learned several facts not previously made clear that militate in favor of revisions to Order 03, as discussed below.

36 **COMMISSION DETERMINATIONS:** We reject Staff's argument in its petition for reconsideration that using REC funds for low-income conservation is unduly preferential. We implicitly rejected this argument in Order 03, and the petition adds nothing to what we have previously considered. Even if such funding constitutes a "preference," it is not one that is "undue". Differentials of regulatory treatment based on "reasonable differences in conditions" are not unlawful.<sup>23</sup> It is reasonable to distinguish low income programs from other utility functions. Indeed, the Commission has approved such funding many times for PSE and others. Order 03 simply allocates additional funds to an existing program partially funded each year with ratepayer dollars.

37 However, Staff's second argument in its petition - that we should reconsider Order 03 in light of learning about the availability of the Enron settlement funds during 2010 - turns out to have considerable merit, as we learned on reopening the record in this proceeding. We do not take issue with the Joint Parties' argument that the specific amounts and sources of other funds available for low-income conservation in the near term were not particularly material in the context of the low income advocates' original proposal for a seven year program based on funding deficiencies expected over that time frame. However, such facts prove to be highly material when we focus on the current program period, as in Order 03.<sup>24</sup>

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<sup>23</sup> See *Cole v. Washington Utilities & Transportation Comm'n*, 79 Wn.2d 302, 310, 485 P.2d 71 (1971).

<sup>24</sup> Given the timing of the Enron payment, vis-à-vis the procedural schedule in this docket, it certainly is arguable that the low income advocates should have informed the record of the expected windfall funding. However, because their failure to do so took on a high degree of

38 Paragraph 61 in Order 03 (internal footnote deleted) states:

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 \$2.2 million per year, or \$4.4 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. We accordingly determine that PSE should be authorized to use \$2.2 million in the REC proceeds deferral account established by this Order to increase the funding of its low income energy efficiency (*i.e.*, conservation) program for the 2010 – 2011 program period.

39 We learned from petitions for reconsideration filed by the Energy Project and Staff, and on reopening the record, that approximately \$2.1 million in funds from the Enron settlement were made available to capture the equivalent conservation in early 2010. Indeed, we heard for the first time on August 17, 2010, that the Joint Parties never intended to use any REC proceeds the Commission might award during 2010, because they would not be able to do so given the requirement to spend the Enron funds by the end of this year. We determine on the basis of these facts, consistent with Staff's petition for reconsideration, that the discretionary funding authorized in Order 03 should be reduced by 50 percent to a maximum expenditure of \$2.285 million for 2011.

40 We state this determination in terms of a maximum expenditure from REC proceeds considering other information we learned on reopening the record. We find significant, among other things, the fact that PSE's administration of low-income conservation funds in consultation with the Conservation Resources Advisory Group (CRAG) and working with the public interest agencies can be constrained in various ways due to the Company's interpretation of its tariff and by conditions imposed on expenditures from certain funding sources. Mr. De Boer testified, and other evidence shows that PSE has historically interpreted its tariff schedules 83 and 120 to require

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significance only in the wake of Order 03, and because they voluntarily brought it to our attention via the Energy Project's petition for reconsideration, we find no improper motive in their failure to disclose this fact.

that funds collected from ratepayers for conservation under Schedule 120 can be expended only on energy efficiency measures and not on repairs that make those conservation expenditures effective, or more effective.<sup>25</sup> PSE, on the other hand, has recently interpreted Schedule 201 of its tariff to allow the use of funds from sources other than tariff dollars from Schedule 120 to pay for repair measures. Thus, “the application of the REC proceeds was originally proposed as an additional funding source to pay for repairs.”<sup>26</sup>

- 41 Mr. De Boer testified that PSE is now revisiting its interpretations of these various tariff schedules, there being no express prohibition against funding repairs to capture cost effective conservation if both the repair dollars and conservation measure dollars are part of the cost-effectiveness equation. Thus, in future program periods, revenue collected via Schedule 120 and allocated to low-income conservation can balance the expenditures for repairs and expenditures for efficiency measures in a way that the captures additional cost-effective conservation.
- 42 PSE’s more recent interpretation of its tariff schedules, with which we agree, may have a significant impact on the low-income conservation program budgeting process in future periods. In the present context, for example, we exercise the Commission’s discretion to allow PSE to use up to \$2.285 million in REC proceeds to fund low-income conservation in 2011. We do so with the condition that PSE, in consultation with the CRAG and the low-income agencies, must spend these dollars with an eye to striking an appropriate balance between funds for repairs and funds for energy efficiency measures so that the conservation captured by the use of these funds is, in fact, cost effective. We require PSE to use the CRAG as soon as possible to consider the impact of this funding source on existing budgets, including consideration of an appropriate balance of expenditures for repairs and energy efficiency measures that will optimize the use of these funds to capture additional cost-effective conservation. Put another way, we do not find it appropriate for the REC funds to be devoted exclusively, or even principally, to fund repairs while other funding sources are used exclusively or principally to fund energy efficiency measures. There may be circumstances where a more imbalanced use of individual fund sources is appropriate

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<sup>25</sup> See Exhibit J-20.

<sup>26</sup> *Id.*

or even required, as in the case of the Enron funds that must be used for repairs, but we do not regard the use of REC funds to be one of them.

43 We also require, as we did in Order 03, that PSE file a report within six months following the end of the current low income conservation program period detailing its expenditures by fund source and the conservation savings achieved. The report will be subject to Staff's audit and will be presented to the Commission at an open meeting.

44 During this proceeding we learned more about the multiplicity of funding sources and the significant complexity to the administration of low-income conservation programs. In addition, it appears there may be considerable variation among the three investor owned electric companies we regulate in terms of how much is spent, and on what, to achieve cost-effective conservation in the low income communities. We accordingly will initiate a broader review of electric utility expenditures for low-income conservation programs by holding an industry-wide workshop in the relatively near term so that we can gain a better, more detailed understanding of how these programs are administered by PSE, Avista and PacifiCorp and what results are being achieved. The Commission will provide details about the workshop by separate notice.

### **ORDER**

#### THE COMMISSION ORDERS THAT:

- 45 (1) PSE's Petition for Reconsideration is denied.
- 46 (2) The Energy Project's Petition for Reconsideration is denied.
- 47 (3) Commission Staff's Petition for Reconsideration is granted in part. Order 03 is modified in all respects necessary to provide that up to \$2.285 million of the REC proceeds in PSE's hands as of November 30, 2009, are authorized for expenditure by PSE to capture additional cost-effective conservation under the Company's low income conservation program during 2011, instead of the

\$4.57 million originally authorized by the terms of Order 03. Commission Staff's petition is, in all other respects, denied.

- 48      (4)      PSE is required to use the CRAG to determine the optimal, balanced use of the REC funds authorized by this Order for expenditure during 2011 in its low income conservation program 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.
- 49      (5)      Any REC funds authorized for expenditure, but not expended during 2011, will be booked to the deferral account established by Order 03 for REC proceeds received by PSE after November 30, 2009.
- 50      (6)      To implement the Commission's requirements in Order 03 that one or multiple proposals concerning the appropriate rate of interest to be applied to balances in the REC deferral accounts for periods before and after November 30, 2009, and the crediting method for REC proceeds received by PSE as of November 30, 2009, the proposals must be presented by motion(s), with any necessary supporting evidence and argument. We establish September 22, 2010, as the date by which parties must file their proposal(s) via appropriate motion(s).
- 51      (7)      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 Order.



- 52      (8)      The Commission retains jurisdiction to effectuate the terms of this Order and its prior orders in this proceeding.

Dated at Olympia, Washington, and effective August 31, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner