BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION Complainant, vs. PACIFICORP d.b.a. PACIFIC POWER, Respondent.	**DOCKET UE-100749** **PETITION FOR RECONSIDERATION**

I. INTRODUCTION

1. Pursuant to RCW 34.05.470 and WAC 480-07-850, PacifiCorp d/b/a Pacific Power (or the Company) respectfully requests that the Washington Utilities and Transportation Commission (Commission) reconsider Order 6 entered on March 25, 2011 in this proceeding (Order).

2. PacifiCorp requests reconsideration on the following issues: (1) the Commission's adoption of an ambiguous and arbitrary policy on tax issues, including the Commission's rejection of the Company's request to move to full normalization and decision to adjust rate base to selectively normalize regulatory assets associated with deferred accounts; (2) the Commission's decisions on net power cost (NPC) issues, including the DC Intertie, arbitrage revenues, wind integration costs, and minimum loading and deration; and (3) the Commission's conclusions with respect to rate of return, including return on equity and capital structure.

3. PacifiCorp requests that the Commission reconsider its Order and modify it as set forth in this Petition for Reconsideration. Absent the changes requested by PacifiCorp, the Order will result in unjust and unreasonable rates, contrary to RCW 80.28.020, will be based on erroneous findings and legal conclusions, and will be incomplete.

II. ARGUMENT

A. The Commission's Order on Tax Issues Should be Reconsidered Because it Unfairly Penalizes PacifiCorp for Seeking Clarity and Consistency in the Commission's Regulatory Tax Policy.

4. For the reasons outlined below, the Company respectfully asks the Commission to modify its Order as follows: (1) consistent with the Commission's decision to normalize the repairs deduction, the Commission should allow PacifiCorp to move to full normalization for all other temporary book-tax differences (with the exception of the temporary book-tax difference for equity AFUDC); (2) if the Commission continues to disapprove full normalization, it should return to its pre-existing regulatory policy of flow-through accounting when lawfully allowed, thereby rejecting the new policy adopted in Staff's adjustment for the selective normalization of certain regulatory assets associated with deferred accounts;[1] and (3) given the uncertainty created in this docket, the Commission should under any circumstances clarify its policy on flow-through accounting so that it can be properly understood and applied on a prospective basis.

1. Background

5. The tax issues in this case arose as a result of the repairs deduction, a change in income tax accounting for certain capital assets.[2] The Internal Revenue Service (IRS) approved this change for PacifiCorp in October 2009, beginning with the 2008 tax year.[3] Under the Commission's policy of flow-through accounting, \$25.3 million of the \$29.6 million in total Washington-allocated tax benefits generated through December 31, 2009, would be flowed

---

[1] The Company set forth the adjustments necessary for this case to reflect the Commission's historic approach to flow-through accounting in Exhibit No. RF-12 and Exhibit No. RF-13. These exhibits demonstrate that the case can be converted to flow-through accounting without any appreciable revenue requirement impact.
[2] Fuller, Exh. No. RF-1T, 2:12-13.
[3] Fuller, Exh. No. RF-1T, 3:2-3.

through in 2008, prior to the 2009 test period in this case.[4] To avoid this result—which would have deprived customers of most of the benefit of the repairs deduction—prior to the filing of this case the Company began meeting with Staff and Public Counsel to discuss a proposal to move to full normalization. The Company sought feedback from Staff on the proper procedure by which to raise this issue; Staff expressed a clear preference that the Company present this issue in its general rate case proceeding.[5]

6. Following up on these meetings, the Company filed a request to move to full normalization in this case, demonstrating that the transition in this case could be accomplished without a material financial impact.[6] Consistent with this request, the Company also specifically sought normalized treatment of the repairs deduction. This proposal ensured that PacifiCorp's customers would receive the full benefit of the repairs deduction. At the same time, PacifiCorp specifically objected to an approach of selective normalization of temporary book-tax differences, including the repairs deduction, on that it was unfair and would create "uncertainty as to the correct accounting treatment of the deferred income taxes generated by the Company's temporary book-tax differences for SEC and FERC financial reporting purposes and subjects the Company to the possibility of prior period adjustments to its earnings if the incorrect regulatory treatment is assumed."[7]

7. Instead of acknowledging PacifiCorp's efforts to be fair and constructive, Staff responded with several major tax adjustments, reducing the Company's proposed revenue requirement while providing no additional regulatory certainty, consistency, or direction on these important policy issues. Specifically, Staff proposed that the repairs deduction be normalized and fully

[4] Fuller, Exh. No. RF-1T, 7:11-14.
[5] Fuller, Exh. No. RF-8T, 8:7-10.
[6] Fuller, Exh. No. RF-1T, 6:7-11.
[7] Fuller, Exh. No. RF-1T, 8:2-7.

annualized, unlike any other rate base item in the case, which doubled the rate base deduction. At the same time, Staff opposed the change to full normalization and proposed a significant adjustment to convert the case back to flow-through by, ironically, proposing to normalize non-property related book-tax differences. The Company pointed out the inconsistency of Staff's adjustment with its opposition to full normalization, and its position in discovery that: "In this case, Staff is not proposing normalization for any book/tax difference, other than with respect to the repairs deduction."[8] Staff's position then shifted in supplemental testimony. Staff dropped its proposal to normalize all non-property related book-tax differences, but proposed an even larger adjustment by seeking for the first time to selectively normalize book-tax differences associated with certain deferred accounts, including the Chehalis deferral.[9]

8. The Order accepts Staff's adjustments without addressing the serious policy issues they create. The Order results in significant new uncertainty, thrusting PacifiCorp into precisely the kind of regulatory environment that its filing in this case was designed to avoid. The Commission has effectively approved an ad hoc approach, allowing the Commission to direct the use of either flow-through or normalized accounting for any book-tax difference in a particular case (except those required to be normalized by the Internal Revenue Code (IRC)), depending on the revenue requirement produced or other subjective factors unknown to the Company.

9. As discussed below, one of the negative impacts of this selective approach to normalization is already painfully clear to the Company. In addition to the actual revenue requirement reduction ordered in the case, the change in the tax treatment of the regulatory assets associated with the Chehalis and other deferred accounts (from flow-through to normalized) will

---

[8] Fuller, Exh. No. RF-8T, 9:13-18; RF-10.
[9] Breda, Exh. No. KHB-5T, 1:14-21.

require the Company to unexpectedly record income tax expense of approximately $5.4 million, thereby reducing its 2011 earnings unless the Order is revised upon reconsideration.

2. The Company Respectfully Requests that the Commission Reconsider the Denial of the Company's Request to Move to Full Normalization.

10. In rejecting PacifiCorp's proposal to move to full normalization, the Commission stated that it "must carefully evaluate the merits of this proposed policy change."[10] The Order is silent, however, on several key issues associated with PacifiCorp's proposal.

11. First, the Order reflects a fundamental and unexplained inconsistency in accepting (and doubling) the benefits of normalized treatment of the repairs deduction and otherwise rejecting full normalization. Two of the Company's other jurisdictions, Utah and Idaho, generally applied flow-through accounting prior to the repairs deduction. To permit full normalization of the repairs deduction in a manner consistent with their overall regulatory policy, both commissions moved to full normalization.[11] In contrast, the Order affirms the Commission's policy of flow-through accounting, while embracing normalized treatment of the repairs deduction. Without any attempt to reconcile this inconsistency or to articulate rationalizing standards, the Commission's approach conflicts with the prohibition against arbitrary ratemaking, as explained in *Duquesne v. Barasch*: "[A] State's decision to switch arbitrarily back and forth between methodologies in a way which required investors to bear the risk of bad investments at some times while denying them the benefit of good investments at others would raise serious constitutional questions."[12]

---

[10] Order ¶ 277.

[11] *See In re PacifiCorp*, Idaho PUC Order No. 32196 at 59-60 (Feb. 28, 2011) ("The Company also requests approval to move to full normalization treatment of income taxes for purposes of setting rates. Staff supports this recommendation. We accept the Company's recommendation to fully normalize the repairs deduction and all other temporary book-tax differences, with the exception of the equity allowance for funds used during construction ("equity AFUDC")."); *In Re Rocky Mountain Power*, Docket 09-035-23, Order re: Treatment of Repairs Deduction and Basis Normalization (Dec. 8, 2009).

[12] *Duquesne v. Barasch*, 488 US 299, 314 (1989).

12. Second, the Order states that the Commission's policy has been to use "flow-through accounting for income taxes generally since liberalized depreciation was first introduced into tax law."[13] However, in this case, Staff has been unable to identify the extent to which each utility in Washington remains subject to flow-through accounting because of the multitude of express and implied exceptions to the policy.[14] While the Order raised concerns about the potential harm to customers that could occur under full normalization,[15] the Commission never addressed the harm to customers and utilities arising from perpetuation and expansion of a policy that has become too ambiguous to permit careful tracking, auditing, accounting, reporting, or compliance.

13. The Commission has set forth no standards by which a utility can predict when the Commission will adopt exceptions to its general rule in favor of flow-through accounting. Even more troubling, the Order indicates that the Commission may find at a future date that an exception to the flow-through accounting rule is warranted even though a utility has historically applied flow-through accounting to a particular book-tax difference. This ad hoc treatment of exceptions to flow-through accounting raises the concerns around arbitrary policy-making referenced in *Duquesne.*

14. Third, the Order found that the Company failed to meet its burden to prove that the Commission should adopt fully normalized accounting because the Company did not quantify the flow-through effects from past periods.[16] For two reasons, this should not have been an impediment to allowing full normalization. First, the Company did quantify the incremental cost of moving to normalization in this case—which was basically zero.[17] The impact of past flow-

---

[13] Order ¶ 277.
[14] Breda, TR 756:1-3; Fuller, Exh. No. RF-9 (indicating that a comprehensive list of exceptions to flow-through treatment for each Washington utility does not exist and that it may be difficult to discern whether the Commission has in fact made exceptions because normalization approval could be implied in some cases).
[15] Order ¶ 277.
[16] Order ¶ 278.
[17] Fuller, Exh. No. RF-1T, 6: 9-11.

through accounting is not an incremental cost of the change, because customers will bear this cost whether or not the Commission's policy is changed.

15. Second, by definition, the exact amount of past flow-though accounting cannot be determined until the Company stops using flow-through accounting, an action that must be first approved by the Commission. However, the amount can be estimated, and it is dwarfed by the benefits associated with normalizing the repairs deduction. For example, the final regulatory asset for flow-through effects from past periods for non-fixed asset temporary book-tax differences as of December 31, 2009, would have been approximately $1.6 million, which would have a negligible rate impact if amortized over a 5 or 10 year period.[18]

3. The Company Respectfully Requests that the Commission Reconsider its Acceptance of Staff's Adjustment Based upon Normalizing Chehalis and Other Regulatory Assets Associated with Deferred Accounts.

16. In rejecting the Company's proposal for full normalization, the Commission adjusted the amount of ADIT that was included in rate base in the Company's fully-normalized case by $5.4 million, based upon Staff's recommendation.[19] In contrast, the Company demonstrated that, absent application of a policy of selective normalization, the filing could be converted to flow-through accounting with essentially no change to the revenue requirement.[20]

17. Staff's adjustment was related to temporary book-tax differences for which the Commission had not explicitly ordered normalized accounting, but Staff argued should be normalized because doing so would be "consistent with prior Commission orders."[21] Staff specifically referenced the Chehalis regulatory asset as subject to this implicit normalization, the deferral of which was based on RCW 80.80.060(6) and WAC 480-100-435, which provide for

[18] This amount was derived by taking the non-property accumulated deferred tax liability of $1,042,313 as quantified in Exhibit No.__(RF-6), page 4 of 6, grossed up for federal income taxes. In this case, the gross up factor is 1.5385.
[19] Order ¶ 279.
[20] Fuller, Exh. No. RF 1T, 6: 9-11.
[21] Brief on Behalf of Commission Staff ¶ 139.

deferral of long-term financial commitments such as the Chehalis plant.[22] Staff claimed that the inclusion of income taxes as a component of a deferral means the deferral "is consistent with normalization and inconsistent with flow-through."[23] The Commission adopted Staff's position on this issue, finding that "[a]ccording to RCW 80.80.060(6) and WAC 480-100-435, the cost of the investment and related taxes are deferred, which we interpret to be consistent with normalization."[24]

18. In the Order, the Commission adopted Staff's position that the Commission's approval of deferred accounting impliedly adopts normalized accounting of the book-tax difference associated with the creation of the deferral.[25] For the following reasons, PacifiCorp requests that the Commission reconsider this decision.

19. First, the approach is a significant, unsupported change in Commission policy. Staff stated that the Commission's regulatory policy with respect to income taxes is flow-through when it is lawful to do so.[26] In the Order, the Commission affirmed this policy statement.[27] The Company employs this policy for accounting purposes and has employed the policy in its previously filed rate cases in the state of Washington.[28] Staff has acknowledged that prior authorizations for deferred accounting have included concurrent and explicit authorization to use normalized accounting for the temporary book-tax difference generated by the related regulatory

[22] Brief on Behalf of Commission Staff ¶ 139.
[23] *Id.*
[24] Order ¶ 281.
[25] The Commission's policy is ambiguous, but this is one potential interpretation because Staff's adjustment included normalized accounting for the temporary book-tax differences generated by deferrals that do not include an income tax component, such as the Grid West Loan, where the Commission's basis for using normalized accounting for the temporary book-tax difference generated by the Chehalis deferral cannot be applied.
[26] Breda, Exh. No. KHB-1T, 7:10-21; Brief on Behalf of Commission Staff ¶ 127.
[27] Order ¶ 277.
[28] Fuller, Exh. No. RF-1T, 6:6-7

asset. There was no such authorizing language for any of the deferrals underlying Staff's adjustment.[29]

20. In the Company's most recent litigated rate case, Docket UE-061546, the Commission approved, and Staff did not contest, the policy of flow-through accounting for the book-tax differences associated with deferred accounts in the absence of an express order allowing normalized treatment.[30] Importantly, in that case the Company recorded the temporary book-tax difference for the Grid West Loan regulatory asset, one of the items at issue in the Commission's $5.4 million ADIT adjustment, on a flow-through basis. No party raised an objection to flow-through treatment of this or any other regulatory asset, and the Commission approved rates that included flow-through ADIT on the Company's regulatory assets.

21. In rejecting PacifiCorp's proposal to move to full normalization, the Commission stated that it "must carefully evaluate the merits of this proposed policy change and first decide if there is ample evidence in the record to demonstrate that it will not harm ratepayers and not generate unwarranted revenue for the Company."[31] The Commission should have applied this standard to Staff's proposed policy change to imply normalization in the authorization of deferrals. Instead, the evaluation of Staff's proposal stated only that authorizing a deferral that includes taxes "is consistent with normalization." The Commission cited no law, policy, or reasoning for this finding. In addition, the Order was incomplete because it did not address whether a deferral under RCW 80.80.060 is *also* consistent with flow-through,[32] and it did not address the Commission's rationale for applying normalized accounting to temporary book-tax differences

---

[29] Breda, TR. 755:18-756:3.
[30] Docket UE-061546, Wrigley, Exh. No. PMW-4 at Pages 7.5 and 7.5.1. The Company requests that the Commission take official notice of this document pursuant to WAC 480-07-495. The Company has attached the cited pages for convenience as Exhibit 1.
[31] Order ¶ 277.
[32] Order ¶ 281.

for deferrals that do not include taxes, such as the Grid West Loan and similar book-tax differences listed in Exhibit No. RF-15.

22. Second, the Commission failed to consider whether the new policy the Commission adopted would harm the Company. In fact, the Commission's policy will result in harm to PacifiCorp in this case because the Company must unexpectedly adjust its accounting for the relevant book-tax differences. For accounting purposes, the Company must record its income taxes in a manner that is consistent with regulatory policy of the Commission. In this way, the income taxes reported by the Company for accounting purposes match the basis for which income taxes are reflected in the Company's revenue requirement and in effect properly state the books to be used as test year in the Company's historic rate cases.

23. Under flow-through accounting, the Company has previously recorded the deferred income tax expense associated with the reconciling book-tax differences in Exhibit No. RF-15 to a regulatory asset.[33] Because the Commission has now ordered the Company to record these book-tax differences on a normalized basis, the regulatory asset must be adjusted and the Company will be required to incur a true-up for the related expense during 2011 in an amount roughly equal to the accumulated deferred income taxes in Exhibit No. RF-15; or $5.4 million.

24. Third, the Commission's finding that deferring taxes is consistent with normalization is erroneous because it appears to be a result of conflating two different concepts: deferral as a cost recovery mechanism and deferred taxes. Deferrals often include a tax component, as in the case of the Chehalis regulatory asset. The tax component of a deferral, if any, may be included on a flow-through or normalized basis, or both. In any case, this is a cost that is deferred and is indistinguishable from all the other costs included in the deferral. However, these costs are not

[33] The initial recognition of these items on a flow-through basis generally occurred during the same accounting period during in which the respective orders were issued; 2006 – 2009.

the "deferred" taxes that are subject to either the flow-through or normalized accounting in Staff's adjustment. Rather, the recognition of the regulatory asset itself creates a book-tax difference, which can be either flowed-through or normalized. Allowing certain tax costs to be deferred does not logically lead to the conclusion that normalized accounting treatment for the book-tax difference created by the related regulatory asset is also allowed, especially when normalization is an exception to the general rule of flow-through accounting.[34]

25. The Order does not explain why the Commission believes that the authorization of a deferral that includes taxes means that the temporary book-tax difference created by the deferral should be normalized. The Order simply states that "the cost of the investment and related taxes are deferred, which we interpret to be consistent with normalization."[35] As discussed above, the income tax component of a deferral, if any, may be included on a flow-through or normalized basis, or both, so authorizing a deferral is equally as consistent with normalization as it is with flow-through.

26. There is no question that the Commission did not explicitly provide for normalization of the book-tax difference associated with the Chehalis regulatory asset and that the parties did not even address the issue when evaluating the Chehalis deferral.[36] Moreover, in discovery in this case, Staff never identified the Chehalis deferral as an exception to the Commission's normal policy of flow-through accounting.[37]

27. Given that the Commission has emphasized in the Order that the default policy in Washington is flow-through accounting, it is unreasonable to find that approval of a deferral

---

[34] If the Commission prefers, as an exception to its general rule in favor of flow-through accounting, that the Company use normalized accounting for the temporary book-tax difference related to a Commission authorized deferral, it should be authorized concurrently and explicitly in the order approving the deferral, not one or more accounting periods later in a general rate case.
[35] Order ¶ 281.
[36] *See* PacifiCorp's Initial Post-Hearing Brief at 44.
[37] Fuller, Exh. No. RF-9 and RF-10.

impliedly approves normalization of the book-tax difference associated with the creation of the deferred account. Therefore, if the Commission rejects the Company's request to reconsider the policy choice in favor of flow-through accounting, the Company requests that the Commission clarify that its policy is to use flow-through accounting to the extent allowed by law, with limited exceptions for explicit approvals of normalization. If the Commission applies this policy in this case, the Company has detailed the necessary adjustments to the Company's case to implement this decision, which will have virtually no revenue requirement impact.[38]

4. At a Minimum, the Commission Should Clarify its Policy on Normalization.

28. PacifiCorp further requests that the Commission clarify its policy on normalization. A general policy of flow-through accounting with selective and implicit authorization to use normalized accounting creates significant regulatory and accounting uncertainty for the Company. The Company must account for its book-tax differences in accordance with orders allowing deferrals long before filing a general rate case.[39] The Order does not cite any legal or policy standard for finding that taxes associated with deferrals should be normalized and provides for implied exceptions to flow-through accounting, so utilities cannot predict when normalized accounting will be required. The Order also does not clarify whether taxes included in authorizations for deferral must always be normalized, or only deferrals pursuant to RCW 80.80.060. The Commission's policy leaves PacifiCorp, and potentially other utilities, unable to determine how to account for such book-tax differences.

29. The harm that will result from the Commission failing to clarify its policy on normalization is real. Under flow-through accounting, the Company records deferred income tax expense to a regulatory asset under the assumption that the regulatory asset is probable of

[38] Fuller, Exh. No. RF-12 and Fuller, Exh. No. RF-13.
[39] Fuller, Exh. No. RF-1T 8:2-7; Fuller, Exh. No. RF-8T 6:16-7:7.

recovery as the deferred income taxes become currently due. The Commission's decision calls into question the recoverability of the regulatory asset because 1) at the time the accounting entries are made, the Commission's ambiguous policy makes it impossible for the Company to determine whether an individual temporary book-tax difference should be recorded on a flow-through or normalized basis, and 2) using the Grid West regulatory asset as an example, the Company cannot even rely on a litigated rate case as part of making that determination because the Commission may later change the accounting of the same item. The Commission should clarify its policy to avoid the harm that will result from a utility being unable to predict how the Commission will require the utility to account for a book-tax difference.

B. Net Power Cost Issues

1. The Commission's Adjustment to Remove the DC Intertie from Rates is Based on an Erroneous Finding.

30. The Commission adopted Staff's and ICNU's proposal to remove costs associated with the DC Intertie contract from rates.[40] In so doing, the Commission found that "[i]f the contract is not being used by the Company, it has an obligation to market its available transmission capacity in an effort to recover some of its costs."[41] The Commission based its conclusion on the testimony of Staff and ICNU "that the contract is not expected to be used during the rate year."[42]

31. The Commission's conclusion that the record shows that the DC Intertie will not be used in the rate effective period is incorrect. ICNU witness Mr. Falkenberg conceded that the Company uses the DC Intertie to purchase power.[43] Mr. Duvall testified that the Company uses the line for over 200 transactions a year, or 75,000 MWh, at a rate of $2 per kW-month, which compares favorably to Bonneville Power Administration's capacity charge of $8 per kW-

[40] Order ¶ 152.
[41] *Id.*
[42] Order ¶ 149.
[43] Falkenberg, TR. 657:10-658:16 ("Q. But on a year-[in], year-out basis there's hundreds of transactions a year that go over that line, correct? A. I don't know how many there are. There are some.").

month.[44] The Commission did not address this evidence in the Order. The Company requests that the Commission reconsider its removal of the costs associated with the DC Intertie contract on the basis that the record shows that the contract will be used and useful in the rate effective period.

32. Moreover, to the extent the Commission's decision hinges on the fact that GRID does not reflect energy transactions at the Nevada Oregon Border, the origination point of the DC Intertie, such a rationale is in direct conflict with other adjustments the Commission approved in this case. The Commission explicitly stated that when confronted with the GRID model's results and actual data, the Commission "give[s] greater weight to actual results unless they are proven to be unreliable."[45] Consistent with this policy choice, the Commission adopted adjustments to the SMUD contract and arbitrage sales revenues, both of which lowered NPC, on the basis that using actual data is superior to relying on the GRID model.[46] Accordingly, it would be inconsistent for the Commission to ignore evidence regarding the Company's actual use of the DC Intertie.

2. The Commission's Adjustment to Include Additional Arbitrage Revenues is Based on an Erroneous Finding.

33. The Commission adopted Staff's and ICNU's proposed adjustment to include revenue from arbitrage sales that they claim are not reflected in GRID.[47] The Commission found that in this case, the four-year average of actual operations provides a better alternative to calculating arbitrage sales than GRID.[48] The Commission stated that "PacifiCorp does not argue that Staff's and ICNU's numbers are not representative of the sales it would anticipate during the term rates will be in effect. Accordingly, we accept ICNU's calculation of arbitrage sales."[49]

---

[44] Duvall, TR. 304:2-8.
[45] Order ¶ 134.
[46] Order ¶¶ 111, 134.
[47] Order ¶ 108.
[48] Order ¶ 112.
[49] *Id.*

34. In fact, the Company did challenge the accuracy and completeness of the numbers presented by Staff and ICNU. First, PacifiCorp pointed to the steadily declining sales numbers in the most recent four-year average and argued that the low sales numbers from the most recent year undermined the basis for the adjustment in the first instance.[50] Second, PacifiCorp demonstrated that if trading volumes were included in the adjustment, the amount of the arbitrage adjustment would be substantially reduced.[51] The Company requests that the Commission reconsider its adoption of Staff's and ICNU's proposal on this issue.

3. Wind Integration

a. The Commission's Conclusion that the Supremacy Clause Does Not Preempt Disallowance of Intra-Hour Wind Integration Costs is Erroneous.

35. The Commission accepted Staff's and ICNU's proposal to remove intra-hour wind integration costs associated with non-owned facilities.[52] The Commission found that intra-hour costs associated with non-owned wind resources should be rejected on two bases. First, the Commission found that PacifiCorp failed to satisfy its burden to demonstrate these costs were known and measurable, because the Company calculated the costs outside the GRID model and presented an updated study that did not afford Staff and ICNU a reasonable opportunity for review.[53] Second, the Commission found that the Supremacy Clause of the United States Constitution does not require the Commission to pass through these costs in rates.[54]

36. Although the Commission claimed that it was rejecting intra-hour wind integration costs for non-owned facilities on an evidentiary basis, this claim is not borne out in the Order. The Commission did not reject intra-hour wind integration costs for Company-owned resources on

[50] *See* Falkenberg, Exh. No. RJF-3C; Falkenberg, TR. 667:16-21.
[51] Falkenberg, TR 667:6-12.
[52] Order ¶ 125.
[53] Order ¶ 125.
[54] Order ¶ 126.

evidentiary grounds, and the Company calculates intra-hour wind integration costs in the same manner for Company-owned and non-owned wind facilities.[55]

37. As a matter of law, the Order is incorrect in its conclusion that the Commission may disallow costs that the Company is required to incur under a FERC-approved tariff. The Commission's analysis of this issue is perfunctory. The Commission simply states that "FERC has not set a wholesale wind integration rate under the Company's OATT, and accordingly, PacifiCorp's remedy is to file with FERC for an amendment to its OATT." The Commission cites no law in support of its conclusion that it may disallow a cost that FERC requires the Company to incur.

38. The Commission is preempted from disallowing wind integration costs associated with non-owned facilities. First, the Commission's conclusion, and ICNU's reply brief cited by the Commission, relies upon an unduly limited interpretation of FERC preemption that is in conflict with Supreme Court case law. ICNU's central argument is that because FERC has not set a wholesale wind integration rate for PacifiCorp, there is no risk of preemption on the issue. Importantly, ICNU ignores *Mississippi Power & Light Co. v. Mississippi*,[56] the case in which the Supreme Court made clear that *Nantahala Power & Light Co. v. Thornberg*[57] does not limit the issue of FERC preemption to direct attacks by state commissions on wholesale rates. In that case, the Court found that a state was required to treat FERC-mandated payments as reasonably-incurred operating expenses for the purpose of setting retail rates.[58] There is no basis in the law for finding that FERC-mandated expenses are not subject to the same preemption theories as FERC-mandated rates or payments.

---

[55] *See* Order ¶ 126.
[56] 487 U.S. 354 (1988).
[57] 476 U.S. 953 (1986).
[58] *Miss. Power & Light Co.*, 487 U.S.at 369-370.

39. Second, ICNU's reply brief claimed that the filed rate doctrine requires the Commission to abstain from including wholesale interstate wind integration charges in rates.[59] ICNU's argument is off-base. PacifiCorp is not requesting that the Commission establish a wholesale wind integration charge; it is requesting that the Commission allow the Company to recover the costs of providing a FERC-mandated service.

40. Third, the Commission states that the Company's remedy for its disallowance of expenses associated with integrating third-party wind facilities is to file with FERC for an amendment to its OATT.[60] The Commission thereby implies that its disallowance of expenses associated with wind integration hinges on whether the Company presented FERC with a proposed wind integration charge. The Supreme Court found that the preemptive effect of FERC jurisdiction does not turn on whether a specific issue was actually determined by FERC.[61] For example, in the *Mississippi Power* case, FERC never addressed the prudence of a plant that was the subject of a power purchase agreement approved by FERC.[62] The Mississippi utility commission proposed disallowing expenses associated with the agreement on the basis of prudence.[63] The Supreme Court found that the fact that FERC did not address prudence had no impact on the fact that the state's disallowance of costs associated with the agreement was preempted.[64] Similarly, the fact that FERC has not directly considered whether to include a wind integration charge in the Company's OATT does not affect the analysis of federal preemption.

41. The Supreme Court's position on FERC preemption is clear: The reasonableness of rates and agreements regulated by FERC may not be collaterally attacked by a state.[65] Federal

[59] Post-Hearing Reply Brief of ICNU at 10.
[60] Order ¶ 126.
[61] *Miss. Power & Light Co.*, 487 U.S. at 374.
[62] *Id.* at 375.
[63] *Id.* at 375.
[64] *Id.*
[65] *Id.*

preemption precludes the Commission from undermining the OATT by disallowing costs incurred consistent with the OATT. The Company therefore requests that the Commission reconsider its position on this issue to avoid an error of law.

b. The Commission Should Revise the Calculation of the Impact on NPC of Rejecting Intra-Hour Wind Integration Costs.

42. In accepting Staff's and ICNU's proposal to remove the intra-hour wind integration costs for non-owned facilities, the Commission adopted Staff's calculation of the impact on this adjustment of $518,692.[66] Should the Commission reject the Company's request to reconsider its decision to remove these costs, the Company requests that the Commission reconsider this calculation. This calculation is in error because it removes costs from NPC that were previously removed.

43. In the Company's rebuttal case, the Company proposed to address ICNU's adjustment to model wind integration costs in GRID by reducing NPC by the amount ICNU calculated would result from modeling wind integration costs in GRID—$0.6 million on a west control area basis.[67] The NPC evaluated by the Commission in the Order, therefore, already included a $0.6 million reduction to overall intra-hour wind integration costs.

44. The Company requests that the Commission reconsider the adoption of Staff's quantification of the removal of intra-hour wind integration costs associated with non-owned wind resources. The Company requests that the Commission adopt the following calculation to reflect the fact that NPC was already reduced to account for the removal of some intra-hour wind integration costs:

[66] Order ¶ 126 (citing to Staff's Initial Post-Hearing Brief).
[67] Order ¶ 123; Duvall, Exh. No. GND-5T, 28:15-29:10.

- Intra-hour wind integration costs of non-owned facilities account for approximately 37.3% of the total intra-hour wind integration costs.[68]
- Therefore, intra-hour costs of non-owned facilities would account for 37.3% of the Company's $563,211 reduction to wind integration costs, or $209,911 on a west control area basis. On a Washington-allocated basis, the intra-hour non-owned facilities would account for 37.3% of the Company's $124,445[69] reduction to wind integration costs, or $46,418.
- Therefore, Staff's calculation of the removal of intra-hour costs associated with non-owned facilities is overstated by approximately $46,418 on a Washington-allocated basis.

45. Because wind integration costs were not modeled in GRID, the Company's rerunning of GRID in compliance with the Order did not account for this error. Therefore, the Company requests that the Commission revise its order to reduce the impact of Staff's and ICNU's proposed removal of intra-hour costs associated with non-owned facilities to $472,274, a reduction of $46,418 from $518,692, if the Commission rejects the Company's above request for reconsideration related to intra-hour costs.

4. The Commission Should Reconsider and Reject ICNU's Minimum Loading and Deration Adjustment because It Is Not Supported by the Evidence.

46. The Commission adopted ICNU's proposal on minimum loading and deration, which decreases the lower end of a generation unit's operating range and adjusts heat rates.[70] The

[68] The wind generation in west control area during the test period is 1,483,671 megawatt-hours, shown in Cell E770 on tab "NPC" of file "24 - Washington GRC Bench Request Update Rescreen (Confidential).xlsm" of confidential Attachment Bench Request 3-2. The portion of this amount relevant to non-owned wind facilities is 552,971 megawatt-hours, which can be derived at from Cell E787 of the same spreadsheet by dividing the number in that cell by the number in Cell E779. 552,971 megawatt-hours is approximately 37.3% of 1,483,671 megawatt-hours.
[69] Line 19 of file "Summary - Bench Request 3 - 2.4.11.xlsx" of Attachment Bench Request 3-1.
[70] Order ¶¶ 185-188.

Commission conceded that PacifiCorp's minimum loading and deration methodology had merit and that it was a "close call," but adopted ICNU's proposal on the basis that "it appears to better represent the usable range of a generation unit and because it appears to better match the heat rate curve with the de-rated capacity of the plant."[71]

47. The Company requests that the Commission reconsider this finding on the basis that it is erroneous and not based on substantial evidence. PacifiCorp provided evidence that the deration adjustment will only apply when a unit is dispatched at its maximum capacity.[72] The Company also provided evidence showing that there are many hours of dispatch below the derated maximum capacity, during which ICNU's proposal would understate the heat rate.[73] In addition, ICNU's proposal reduces the minimum generation of units below their technical capability, resulting in unrealistic reductions to NPC.[74]

48. The Commission did not address the Company's evidence showing that ICNU's proposed adjustment artificially reduced NPC and modeled units in a manner inconsistent with their technical capabilities. The Commission made a general finding that it "appears" that ICNU's proposal better represents the usable range of a generation unit and "appears" to better match the heat rate curve with the de-rated capacity is an insufficient basis to adopt ICNU's adjustment. These ambiguous statements are not a sufficient basis for adopting ICNU's proposed adjustment.

C. Rate of Return

1. Return on Equity

a. The Commission's Analysis Fails to Consider Market Conditions Now and When The Return on Equity was Last Determined For

[71] Order ¶ 191.
[72] Duvall, Exh. No. GND-5T, 53:18-20.
[73] Duvall, Exh. No. GND-5T, 54:4-13.
[74] Duvall, Exh. No. GND-5T, 55:1-6.

PacifiCorp; These Conditions Do Not Support the Major ROE Reduction Ordered.

49. When determining a reasonable return on equity (ROE), the Commission traditionally has looked to what has changed since the last time it determined a company's ROE.[75] This traditional analysis is entirely absent in the Order.

50. The Commission last decided PacifiCorp's ROE in a contested case in April 2006, when the Commission authorized an ROE of 10.2%.[76] The undisputed evidence in the record demonstrates that: (1) interest rates are nearly the same as those during the Company's 2005 rate case;[77] (2) national averages of authorized ROEs are nearly the same;[78] and (3) utility stocks are now performing worse when compared to the overall market.[79] A reduction of 40 basis points in ROE cannot be justified in light of these facts, which, although clearly included in the record, are entirely ignored in the Order.

b. Current Interest Rates Support a Higher ROE.

51. The Commission found that "low interest rates are a fact of current financial conditions in capital markets and no party suggests that such conditions can be expected to change in the near future."[80] Thus, the Commission concluded that current interest rates support a lower ROE because they reflect lower investor expectations.[81] This conclusion is erroneous. The evidence demonstrates that the single "A" utility interest rate at the time of the hearing were 5.56%, nearly identical to those prevailing when the Commission established an ROE of 10.2% for PacifiCorp

---

[75] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Docket UE-060266, Order 08 ¶¶ 84-86 (Jan. 5, 2007).
[76] *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-050684, Order 04 ¶ 3 (Apr. 17, 2006).
[77] Elgin, Exh. No. KLE-3 1; Gorman, TR. 446:12-20; Gorman, Exh. No. MPG-24 15; Elgin Exh. No. KLE-1T 7:16-17.
[78] Gorman, TR. 448:11-17; Elgin, Exh. No. KLE-7 2; Gorman, Exh. No. MPG-24 13.
[79] Gorman, Exh. No. MPG-1T 7:Fig. 1.
[80] Order ¶ 89.
[81] Order ¶ 92

in 2006[82] and identical to the interest rates that prevailed one year ago when the Commission approved a 10.1% ROE for Puget Sound.[83] Single "A" utility interest rates have not changed appreciably since the time of that hearing—the February 2011 average was 5.68%, and the March 2011 average was 5.56%.[84]

52. Mr. Gorman acknowledged that current interests rates were nearly identical to those when PacifiCorp was authorized 10.2% ROE.[85] Importantly, Mr. Gorman also testified that "the best estimate of future interest rates is current observable interest rates."[86] If this is true and current interest rates are the same as those that supported ROEs of 10.2% and 10.1%, then a 9.8% ROE here is unreasonable and inconsistent with past Commission decisions.

c. The Order's Assumption of a Downward Trend in ROEs is Unsupported in the Record.

53. The Commission adopted its 9.8% ROE in part because it "assume[d] a general downward trend of ROEs," due to the relatively low interest rates in the current economic climate.[87] As support for this assumption, the Commission cited the recent decision by the Idaho Public Utilities Commission in a PacifiCorp's rate case and another decision by the New York Public Service Commission involving a lower risk, delivery-only utility.[88] Although the Commission recognized that its own decisions do not fit into this assumed trend, it failed to distinguish them.[89]

---

[82] *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-050684, Order 04 at¶ 3 (Apr. 17, 2006); Elgin, Exh. No. KLE-3 1; Gorman, TR. 446:12-20; Gorman, Exh. No. MPG-24 15; Elgin Exh. No. KLE-1T 7:16-17.
[83] Elgin, TR. 700:11-21; Hadaway, Exh. No. SCH-1T 21:Table 1; Elgin, Exh. No. KLE-3 1.
[84] See CreditTrends.com report dated April 1, 2011, attached as Exhibit 2. PacifiCorp requests that the Commission take official notice of this interest rate report pursuant to WAC 480-07-495.
[85] Gorman, TR. 448:11-17.
[86] Gorman, TR. 470:2-5.
[87] Order ¶ 92.
[88] Order ¶ 92.
[89] Order ¶ 92.

54. The Order also ignored the evidence in the record that does not support its assumed downward trend. Indeed, in each of the second, third, and fourth quarters of 2010, the average equity returns nationally *increased.*[90] Moreover, the national average in 2010 was 10.34% as compared with the 2007 average of 10.36%.[91] Thus, ROEs now are nearly identical to those awarded before the financial crisis and current recession, providing clear evidence that ROEs are not trending downward. Notably the most recent national ROE average of 10.34% is more than 50 basis points higher than the 9.8% ROE set in this case.[92]

d. The Order's DCF Analysis Improperly Discounts Long-Term Growth Rates.

55. When analyzing the proposed growth rates in this case, the Commission concluded that, "we are hesitant to place too much weight on long term growth rates . . . It is better to rely on short term growth rates because we should be able to confirm their reliability in a comparatively brief time."[93]

56. By its very mathematical terms, the DCF model requires a long-term growth rate.[94] Staff specifically acknowledged that the DCF formula requires a long-term growth rate.[95] Likewise, Mr. Gorman agreed that for this analysis the growth rate must be "sustainable indefinitely."[96] Thus, the Commission's emphasis on short-term growth rates is misplaced and inconsistent with the requirements of its preferred model.

[90] Elgin, Exh. No. KLE-7 2.
[91] Elgin, Exh. No. KLE-7 2.
[92] Elgin, Exh. No. KLE-7 2.
[93] Order ¶ 82.
[94] Gorman, Exh. No. MPG-1T 18:6-10.
[95] Elgin, Exh. No. KLE-1T 25:11-13.
[96] Gorman, TR. 470:16-18.

e. The Order Does Not Properly Account for Security Analysts' Forecast Growth Rates in the DCF Model.

57. While the Company disputes the Commission's reliance on short-term GDP growth rates for its DCF analysis, if the Commission does rely on near-term growth forecasts, it should also give more weight to Mr. Gorman's constant growth DCF model, which used security analysts' five-year growth rate forecasts and resulted in an ROE of 10.5%.[97]

58. Mr. Gorman's testimony here and in past PacifiCorp rate cases was clear: "Security analysts' growth estimates have been shown to be more accurate predictors of future returns than growth rates derived from historical data because they are more reliable estimates."[98] And, perhaps more importantly, these forecasts are precisely what investors look to for projected growth rates when making investment decisions.[99] Here, Mr. Gorman discounted his analysts' growth rates because he argued that, "over an indefinite period of time," a utility's growth cannot exceed that of the overall economy.[100] Nowhere does Mr. Gorman argue that in the near term a utility's growth rate cannot exceed that of the overall economy. His argument was based solely on his conclusion that "[security analysts'] growth rates in this case were far too high to be rational estimates of long-term sustainable growth."[101]

59. If the Commission's analysis focuses on short-term growth rates, and not rates that are intended to be sustainable over the long-term, then Mr. Gorman's argument against the use of security analysts' forecasts is unpersuasive. Indeed, if he is correct and these forecasts are the

[97] Gorman, Exh. No. MPG-1T 27: Table 3.
[98] Gorman, Exh. No. MPG-1T 19:20-22; Gorman, Exh. No. MPG-24 6:15-19; Gorman, TR. 472:9-473:4.
[99] *See* Gorman, TR. 472:9-473:4. Although Mr. Gorman testified with respect to GDP forecasts, his analysis applies equally to forecasts of securities growth rates when he testified that "analysts' projections in general are a good basis to assess what investor's outlooks are" because if investors did not subscribe to the analysts' service they would be out of business. The fact that they are in business and making forecasts necessarily means that investors are looking to them for guidance.
[100] Gorman, Exh. No. MPG-T1 21:8-14.
[101] Gorman, TR. 480:23-481:3. In the Company's 2005 rate case, Mr. Gorman's DCF analysis consisted of only a constant growth model with analysts' growth rates. Gorman, Exh. No. MPG-24 6:15-19.

best predictor of near-term returns, "at least during the projected rate year for this case,"[102] then the Commission should afford his constant growth DCF analysis with analysts' growth rates the most weight and disregard Mr. Gorman's argument that these rates are unsustainable over the long-term. Even Mr. Gorman acknowledged that the only reason he even provided the additional DCF analyses was because he believed the analysts' growth rates were unsustainable over the long term.[103] Therefore, these additional methods, which he used to drive down his recommended ROE from 10.5% to 9.85%, should receive little weight. If the Commission affords proper weight to Mr. Gorman's constant growth DCF analysis using security analysts' growth rates, which resulted in an ROE of 10.5%, its 9.8% ROE cannot be supported.

f. The Order's DCF Analysis Is Based On Contradictory Economic Conclusions.

60. The Commission found Mr. Gorman's analysis persuasive, in part, because the Commission apparently believed that his analysis more accurately described the current economy.[104] The Commission concluded that "financial markets have returned to more normal conditions over the past six to nine months."[105] The Commission also found that, "utility stocks are less volatile than non-utility stocks and, in a period of turmoil, are generally considered safer investments."[106] The Commission used this analysis to justify a lower ROE. However, these two conclusions are in conflict with one another and cannot both support a lower ROE. Mr. Gorman's testimony indicated that the market was rebounding and the economy was coming out

[102] Order ¶ 89.
[103] Gorman, TR. 480:23-481:3.
[104] Order ¶ 81.
[105] Order ¶ 81.
[106] Order ¶ 81.

of the severe recession.[107] Nonetheless, despite the market rally, Mr. Gorman concluded that utility stocks currently lag the market and will continue to do so.[108]

61. Since utility stocks have not participated equally in the stock market rally and will continue to not participate equally, and the Commission found Mr. Gorman's analysis persuasive, then utility stocks cannot be considered by the marketplace to be a favorable investment relative to the market during the current rally. If investors can obtain a greater return now and in the near future by investing in non-utility stocks of equal risk, then it is rational for them to choose the non-utility investment.[109] This suggests a higher ROE is necessary to attract capital to utility investments that are expected to continue underperforming relative to the rest of the market. Thus, this evidence does not support lowering PacifiCorp's ROE, rather its supports the exact opposite conclusion.

g. The Commission's CAPM Analysis is Inconsistent with Its Own Precedent.

62. Here, the Commission acknowledged that the CAPM results were "abnormally low," but nonetheless relied upon them because they "reflect a reason to be skeptical about the need for higher ROEs for investors in this stagnant economy."[110] The Commission also noted that the low interest rates that lead to the abnormally low results are expected to persist through the rate year.[111] However, in the Commission's last litigated rate case, which occurred in the midst of this same stagnant economy, the Commission awarded Puget Sound Energy a 10.1% ROE after "accord[ing] the CAPM results diminished weight," due to the "unusual financial circumstances."[112] Importantly, at that time single "A" utility interest rates were the same as the

[107] Gorman, Exh. No. MPG-1T:4-14.
[108] Gorman, Exh. No. MPG-1T:4-14; Gorman, TR. 442:14-18.
[109] *See* Gorman, TR. 451 23-23 (there is an expectation that "investment decisions are based on rational outlooks").
[110] Order ¶ 90.
[111] Order ¶ 89.
[112] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Docket UE-090704, Order 11 n.369 (Apr. 2, 2010).

current interest rates.[113] The Order fails to recognize that its reliance on CAPM here is inconsistent with the Commission's treatment of the CAPM results in the Puget Sound Energy case. It does not provide any justification for why it is now reasonable to rely on the CAPM results when it was unreasonable to do so in the last litigated case.

h. There is No Evidence in the Record to Support the Rejection of Dr. Hadaway's Regression Analysis Within His Risk Premium Model.

63. The Order rejects the regression analysis performed by Dr. Hadaway as a part of his risk premium model.[114] Dr. Hadaway testified that this analysis was necessary to account for the "inverse relationship between equity risk premiums and interest rate levels [that] is well documented in numerous, well-respected academic studies."[115] Importantly, Mr. Gorman acknowledged the existence of this inverse relationship, but failed to adjust his risk premium analysis for it on the basis that it was not expected to be present under current market conditions.[116] But Dr. Hadaway's regression analyses confirmed the current existence of this relationship, a point never rebutted by any party.[117] On this record, there was no evidentiary basis for the Order's rejection of Dr. Hadaway's regression analysis and its effective conclusion that the equity risk premium is "constant" in all economic circumstances. This conclusion is simply wrong and should not have been used to support a lower ROE.

64. The Commission further stated that it was "skeptical that such a precise formula … can yield such a precise result."[118] But Dr. Hadaway's equity risk premium estimate employs no more sophisticated statistical analysis than the CAPM does. The CAPM employs the same type of linear regression analysis that Dr. Hadaway employed. Rather than estimating the change in

[113] Elgin, TR. 700:11-21; Hadaway, Exh. No. SCH-1T 21:Table 1; Elgin, Exh. No. KLE-3 1.
[114] Order ¶ 86.
[115] Hadaway, Exh. No. SCH-1T 40:1-2.
[116] Post-Hearing Brief on Behalf of ICNU ¶21; Gorman Exh. No. MPG-1T n 29, 30.
[117] Hadaway, Exh. No. SCH-1T 40:5-13; SCH-7 3.
[118] Order ¶ 86.

equity risk premium for a change in interest rate, as Dr. Hadaway does, the linear regression in the CAPM estimates the change in a stock's return relative to a change in the overall market's return. In other words, the CAPM uses linear regression to estimate the beta coefficient that is used to adjust the market risk premium for variations in a company's stock return that can be explained by variations in the market returns. If the Commission is skeptical of the "precise formula" employed in Dr. Hadaway's equity risk premium estimate, then the Commission should dismiss the CAPM for exactly the same reasons rather than accept it as justification to choose the low end of the ROE range.

2. Capital Structure

a. The Order Applied the Wrong Legal Standard.

65. In the Order, the Commission indicated that it has frequently used hypothetical capital structures when determining rates.[119] As support for this proposition, the Commission cited the 2010 Puget Sound Energy rate case decision. In that order, the Commission stated that it "has approved hypothetical capital structures *when there was a clear and compelling reason to do so*."[120] Nowhere in this case did the Commission apply this standard, even though it did adopt a hypothetical capital structure. The Order's failure to apply Commission precedent and a standard that was clearly articulated in the very case cited by the Commission here is erroneous.

b. The Order Erroneously Removed $360 Million of Equity Capital From the Company's Balance Sheet.

66. The Commission accepted ICNU's proposed capital structure, which removed $360 million from the equity component to reflect what ICNU believed were investments not used to

[119] Order ¶ 21.
[120] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Docket UE-090704, Order 11 ¶ 278 (April 2, 2010) (quoting *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Docket UE-060266, Order 08 ¶ 76 (Jan. 5, 2007)) (emphasis added).

support plant.[121] This $360 million adjustment consists primarily of $196 million in short-term investments and an acquisition adjustment of $158 million.

67. With respect to the removal of $158 million in acquisition adjustments, Mr. Gorman's analysis erroneously excluded the *gross* amount of the acquisition adjustment without accounting for the accumulated amortization, which totals nearly $100 million for the two plants.[122] Correcting for this error removes $100 million from his $360 million adjustment.

68. Additionally, Mr. Gorman's analysis is entirely one-sided. While he removes the acquisition adjustment for generating plants outside the west control area, he fails to likewise exclude favorable financings from the capital structure if they are located outside the western control area.[123] Mr. Williams' testimony provided the example of pollution control bonds. The majority of these bonds are related to plants outside the west control area and have a rate of 2.69 %—yet Mr. Gorman failed to remove these from the capital structure in the same way that he removed the acquisition adjustments.[124] Had these bonds been removed, the equity percent would increase by 2% and the embedded cost of debt would increase by almost 0.3%.

69. With respect to the removal of short-term investments, the record is undisputed that the Company exhausted its temporary cash investments in September, 2010, and therefore this proposed adjustment is not supported by facts in the record.[125] To arrive at his $196 million adjustment. Mr. Gorman nets short-term investments against common equity rather than the accepted practice of netting against long-term debt to determine "net debt." Mr. Gorman's

[121] Order ¶ 42.
[122] Williams, Exh. No. BNW-7T 19:5-10.
[123] Williams, Exh. No. BNW-7T 18:16-19:4.
[124] Williams, Exh. No. BNW-7T 19:1-4.
[125] Williams, Exh. No. BNW-7T 19:13-19.

proposal is unorthodox and nowhere does the record contain support for the method from either general financial theory or practice.[126]

70. The Commission's adoption of Mr. Gorman's adjustment with respect to short-term cash investments is also inconsistent with its acceptance of Staff's cash working capital (CWC) adjustment. The Commission concluded that Staff's Investor Supplied Working Capital (ISWC) methodology for calculating CWC "is the most appropriate for this case."[127] One of the underlying premises of the ISWC method is that "invested capital is fungible."[128] This means that short-term cash assets are funded through all forms of invested capital, *i.e.* both debt and equity. Mr. Gorman's adjustment, however, is based on his conclusion that these short-term cash investments are solely funded by equity in the form of retained earnings.[129] If Staff is correct, as the Commission concluded, and capital is fungible, then these short-term cash investments should be removed from both equity and debt—resulting in no adjustment to either ratio.

c. The Order Failed to Consider the Impact of Mr. Gorman's Proposal on the Company's Credit Metrics.

71. The Company justified its actual capital structure based upon the necessity of maintaining its current credit rating for continued access to debt markets at lower costs.[130] As the Commission recognized, this provides clear customer benefits.[131] Despite the abundant evidence in the record detailing the potential risks associated with a credit downgrade and the real and distinct possibility that a downgrade could occur if the capital structure was modified, the Order lacks any discussion of this issue. This failure to address this issue is even more egregious because the Commission adopted Mr. Gorman's proposed capital structure even though he

[126] Williams, Exh. No. BNW-7T 19:13-19.
[127] Order ¶ 291.
[128] Schooley, Exh. No. TES-1T 10:11.
[129] Gorman, Exh. No. MPG-1T 14:19-26.
[130] Williams, Exh. No. BNW-1T 4:19-22; Williams, Exh. No. BNW-1T 10:1-19.
[131] *Wash. Utils. & Transp. Comm'n v. Avista Corp.* Docket UE-100467, Order 07 n.37 (Nov. 19, 2010).

admitted that his analysis failed to consider approximately $500 million in off-balance sheet obligations included by S&P in its analysis and Mr. Gorman ignored the rating agencies explicitly stated expectations for PacifiCorp.[132]

III. CONCLUSION

72. For the reasons stated above, PacifiCorp requests that the Commission grant PacifiCorp's Petition for Reconsideration and revise the Order consistent with recommendations described above.

DATED: April 4, 2011.

Respectfully Submitted,

Katherine A. McDowell
Amie Jamieson
McDowell Rackner & Gibson PC
419 SW 11th Ave., Suite 400
Portland, OR 97205
Telephone: (503) 595-3924
Facsimile: (503)595-3928
Email: katherine@mcd-law.com

Jordan A. White
Senior Counsel
Pacific Power
1407 W. North Temple, Suite 320
Salt Lake City, Utah 84116
Phone: (801) 220-2279
Facsimile: (801) 220-4615

Attorneys for PacifiCorp

[132] Gorman, TR. 463:3-7; Williams, Exh. No. BNW-7T 21:6-14; Williams, Exh. No. BNW-7T 22:2-13; Gorman, Exh. No. MPG-1T 9, 11.

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORATION COMMISSION Complainant, vs. PACIFICORP d.b.a. PACIFIC POWER, Respondent.	**DOCKET UE-100749**

PacifiCorp

Petition for Reconsideration

Exhibit No. 1

PacifiCorp
Washington Results of Operations March 2006
Flow-Through Deferred Tax Adj.

	ACCOUNT	Type	TOTAL COMPANY	FACTOR	FACTOR %	WASHINGTON ALLOCATED	REF#
Adjustment to Rate Base:							
Accumulated Deferred Income Taxes	190	1	(14,156,039)	WA	Situs	(14,156,039)	7.5.1
Accumulated Deferred Income Taxes	281	1	120,489	WA	Situs	120,489	7.5.1
Accumulated Deferred Income Taxes	282	1	(1,416,521)	WA	Situs	(1,416,521)	7.5.1
Accumulated Deferred Income Taxes	283	1	4,920,352	WA	Situs	4,920,352	7.5.1
Net Rate Base Change to Accum. DIT			(10,531,719)			(10,531,719)	
Adjustment to Expense:							
Deferred Tax Expense	41010	1	(12,018,547)	WA	Situs	(12,018,547)	7.5.1
Deferred Tax Expense	41110	1	10,800,684	WA	Situs	10,800,684	7.5.1
Net Deferred Tax Expense Change			(1,217,863)			(1,217,863)	

Description of Adjustment:

This adjustment reflects the removal of the Beg/Ending average balances for all non-depreciation related deferred taxes, and the removal of the associated deferred tax expenses. This in effect flows through to income the current tax impacts on these items. This is the treatment allowed according to the Company's last general rate order, Cause No. U-86-02, and more recently, the General Rate Case settlement in Washington Docket No. UE-03-2065.

PacifiCorp
Semi-Annual Report - March 2006 (used for WA GRC)
WA Flow-Through Amounts for Accounts 282 and 410/411, Exluding the IRS Portions that are Required

	SAP Account	WA Amount	Reference
Total Account 190		14,156,039	B19.3
Less: DTA 425.700 Special Assessment - DOE*	287360	0	B19.3
Account 190 to Remove		14,156,039	To Page 7.5
Total Account 281		(120,489)	B19.3
Account 281 to Remove		(120,489)	To Page 7.5
Total Account 282		(87,295,470)	B19.3
Less: DTL PP&E Powertax	287605	(87,699,665)	B19.3
Less: DTL PP&E Adjustment	287606	2,055,946	B19.3
Less: ADIT-Federal-Property, Plant & Equip	287008	(14,352)	B19.3
Less: DTL PMI PP&E	287607	(3,053,921)	B19.3
Account 282 to Remove**		1,416,521	To Page 7.5
Total Account 283		(6,165,420)	B19.5
Less: DTL 605.100 Trojan Decom. Costs*	287613	0	B19.4
Less: DTL PMI PP&E	287726	(1,245,068)	
Account 283 to Remove		(4,920,352)	To Page 7.5
Total Account 410		36,556,301	B7.3
Less: 282DIT ACRS Property-Electric - WA		24,517,564	B7.1
Less: 282DIT PMIDepreciation-Tax		20,190	B7.1
Less: 282DIT PMIDepreciation-Book		565,485	B7.2
Account 410 to Remove		12,018,547	To Page 7.5
Total Account 411		(29,982,665)	B7.5
Less: 282DIT ACRS Property-Electric - WA		(18,657,796)	B7.4
Less: 282DIT Adjustment		(1,187)	B7.4
Less: 282DIT PMIDepreciation-Tax		(522,998)	B7.5
Account 411 to Remove		(10,800,684)	To Page 7.5

*Deferred Tax Expenses and Balances allocated on the TROJD factor are not removed in the Trojan adjustment and therefore should be removed in this adjustment.

**Account 282 is adjusted on a year-end basis in the Year End Deferred Tax Adjustment.

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORATION COMMISSION Complainant, vs. PACIFICORP d.b.a. PACIFIC POWER, Respondent.	**DOCKET UE-100749**

PacifiCorp

Petition for Reconsideration

Exhibit No. 2

Important Announcement

Last Updated: 01-APR-11

Yields & spreads: US long-term corporates-Averages

Based on Seasoned Bonds with Remaining Maturities of at Least 20 Years. Methodology: Derived from pricing data on a regularly-replenished population of nearly 90 seasoned corporate bonds in the US market, each with current outstandings over $100 million. The bonds have maturities as close as possible to 30 years, with an average maturity of XX years; they are dropped from the list if their remaining life falls below 20 years or if their ratings change. Bonds with deep discounts or steep premiums to par are generally excluded. All yields are yield-to-maturity calculated on a semi-annual compounding basis. Each observation is an unweighted average, with Average Corporate Yields representing the unweighted average of the corresponding Average Industrial and Average Public Utility observations.
Archive includes: Annual data available back to 1919. Monthly data available back to Jan-1919. Daily data available back to 01-Aug-97.

Yields (%)						Past 12 Months		Monthly Average	
	3/31/2011	3/30/2011	3/29/2011	3/28/2011	3/25/2011	High	Low	Mar-11	Feb-11
Avg. Corporate	5.57	5.59	5.61	5.55	5.56	5.67	5.05	5.55	5.66
Aaa	5.15	5.16	5.18	5.12	5.14	5.22	4.49	5.13	5.22
Aa	5.30	5.32	5.34	5.27	5.29	5.43	4.72	5.28	5.37
A	5.54	5.56	5.57	5.52	5.53	5.64	5.00	5.52	5.64
Baa	6.05	6.06	6.09	6.03	6.04	6.23	5.66	6.03	6.15
Avg. Industrial	5.50	5.52	5.54	5.47	5.49	5.59	4.98	5.48	5.58
Aaa	5.15	5.16	5.18	5.12	5.14	5.22	4.49	5.13	5.22
Aa	5.25	5.26	5.28	5.20	5.23	5.37	4.68	5.22	5.31
A	5.50	5.52	5.53	5.47	5.49	5.61	4.98	5.48	5.59
Baa	6.11	6.12	6.15	6.08	6.10	6.30	5.77	6.09	6.19
Avg. Public Utility	5.64	5.65	5.67	5.62	5.63	5.73	5.10	5.62	5.73
Aaa									
Aa	5.35	5.37	5.39	5.34	5.35	5.49	4.74	5.33	5.42
A	5.57	5.59	5.61	5.56	5.57	5.68	5.01	5.56	5.68
Baa	5.99	6.00	6.02	5.97	5.98	6.18	5.53	5.97	6.10

Spreads Above 10-yr Treasury (bp)						Past 12 Months		Monthly Average	
	3/31/2011	3/30/2011	3/29/2011	3/28/2011	3/25/2011	High	Low	Mar-11	Feb-11
Avg. Corporate	209.80	215.30	212.10	211.70	211.90	263.18	199.09	215.17	209.66
Aaa	167.80	172.30	169.10	168.70	169.90	216.18	148.36	172.69	166.03
Aa	182.80	188.30	185.10	183.70	184.90	232.94	175.86	187.69	180.24
A	206.80	212.30	208.10	208.70	208.90	259.04	196.68	212.03	207.55
Baa	257.80	262.30	260.10	259.70	259.90	319.93	245.91	263.21	258.45
Avg. Industrial	202.80	208.30	205.10	203.70	204.90	256.68	191.55	207.82	201.71
Aaa	167.80	172.30	169.10	168.70	169.90	216.18	148.36	172.69	166.03
Aa	177.80	182.30	179.10	176.70	178.90	227.75	170.00	182.17	174.50
A	202.80	208.30	204.10	203.70	204.90	255.13	194.00	207.34	203.08
Baa	263.80	268.30	266.10	264.70	265.90	329.23	253.36	269.03	262.50
Avg. Public Utility	216.80	221.30	218.10	218.70	218.90	270.42	206.00	221.90	217.13
Aaa									
Aa	187.80	193.30	190.10	190.70	190.90	237.61	181.18	192.64	185.55
A	209.80	215.30	212.10	212.70	212.90	262.61	198.91	216.12	211.55
Baa	251.80	256.30	253.10	253.70	253.90	311.32	238.23	256.77	254.08

Spreads Above 30-yr						Past 12 Months		Monthly Average	

Treasury (bp)	3/31/2011	3/30/2011	3/29/2011	3/28/2011	3/26/2011	High	Low	Mar-11	Feb-11
Avg. Corporate	106.10	108.70	106.50	105.40	105.90	140.20	100.98	104.19	100.98
Aaa	64.10	65.70	63.50	62.40	63.90	80.34	51.87	61.71	57.35
Aa	79.10	81.70	79.50	77.40	78.90	104.89	71.56	76.71	71.56
A	103.10	105.70	102.50	102.40	102.90	132.02	98.88	101.06	98.88
Baa	154.10	155.70	154.50	153.40	153.90	210.80	149.77	152.23	149.77
Avg. Industrial	99.10	101.70	99.50	97.40	98.90	129.98	93.04	96.84	93.04
Aaa	64.10	65.70	63.50	62.40	63.90	80.34	51.87	61.71	57.35
Aa	74.10	75.70	73.50	70.40	72.90	99.82	65.83	71.19	65.83
A	99.10	101.70	98.50	97.40	98.90	130.02	94.41	96.36	94.41
Baa	160.10	161.70	160.50	158.40	159.90	215.25	153.83	158.06	153.83
Avg. Public Utility	113.10	114.70	112.50	112.40	112.90	149.84	108.46	110.93	108.46
Aaa									
Aa	84.10	86.70	84.50	84.40	84.90	109.42	76.88	81.67	76.88
A	106.10	108.70	106.50	106.40	106.90	134.02	102.88	105.14	102.88
Baa	148.10	149.70	147.50	147.40	147.90	205.80	145.41	145.80	145.41

						Past 12 Months			
Date	3/31/2011	3/30/2011	3/29/2011	3/28/2011	3/26/2011	High	Low	Mar-11	Feb-11
30-Y Treas. B-Mark:	4.51	4.50	4.55	4.50	4.50	4.65	3.78	4.51	4.65
10-Yr Treas. B-Mark:	3.47	3.44	3.49	3.43	3.44	3.67	2.52	3.40	3.56
Treasury Yields									
Shrt	0.27	0.27	0.29	0.28	0.27			0.24	0.32
Med	1.75	1.75	1.78	1.76	1.73				
Long	3.77	3.78	3.81	3.76	3.77			3.74	3.90
Public Util. Yields									
Price	246.87	247.74	244.49	242.30	243.34			244.73	240.14
Yld	4.62	4.61	4.67	4.71	4.69			4.67	4.64
Dlv	11.42	11.42	11.42	11.42	11.42				
Mkt. Value ths.									
Spot Com. Index:	7,324.77	7,187.13	7,197.98	7,213.08	7,251.32			7,118.77	6,979.25
Indus. Metl. Index:	2,488.98	2,485.23	2,482.28	2,496.42	2,525.53			2,470.09	2,522.81