

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

WASHINGTON UTILITIES AND	)	DOCKET NO. UE-100749
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	
	)	ANSWER OF THE INDUSTRIAL
v.	)	CUSTOMERS OF NORTHWEST
	)	UTILITIES IN OPPOSITION TO
PACIFICORP D/B/A PACIFIC POWER &	)	PACIFICORP'S PETITION FOR
LIGHT COMPANY,	)	RECONSIDERATION
	)	
Respondent.	)	

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**I. INTRODUCTION**

1 Pursuant the Washington Utilities and Transportation Commission's ("WUTC" or the "Commission") notice, the Industrial Customers of Northwest Utilities ("ICNU") submits this answer in opposition to PacifiCorp's (or the "Company") petition for reconsideration ("Petition") of the Commission's final order ("Final Order"). PacifiCorp's Petition is procedurally and substantively flawed because the Company is not seeking to change erroneous or incomplete aspects of the Commission's Final Order, but is instead seeking a third opportunity to brief issues it has already lost. The vast majority of the Company's arguments were previously raised, fully considered by the Commission, and are not appropriate to be included in a petition for reconsideration. The Commission should reject PacifiCorp's Petition and reaffirm its previous conclusion to prevent parties from using the reconsideration process to unnecessarily draw out rate case proceedings with post-order briefing.

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The Commission should reject PacifiCorp’s attempt to reargue cost of capital issues and the power cost issues related to the DC Intertie, arbitrage revenues, wind integration costs, and minimum loading and deration. Except for one minor argument on intra-hour wind integration costs, PacifiCorp does not even attempt to make prima facie arguments that the Commission’s Final Order was erroneous or incomplete, but instead seeks to reargue or expand rejected arguments with the hindsight of knowing the Commission’s factual and legal conclusions.<sup>1/</sup> ICNU also disagreed with certain Commission conclusions in the Final Order, but that does not by itself provide the grounds to seek reconsideration. All parties would like the opportunity to refine and revise their cases based on a review of what the Commission’s Final Order, but the Commission’s procedural rules do not permit the parties to file post-order briefs. PacifiCorp has not identified errors or omissions in the Commission’s Final Order that warrant reconsideration.

## II. ANSWER

### A. Legal Standard

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PacifiCorp noticeably fails to cite the standard for seeking reconsideration, which might explain why the Company ignores the relevant legal requirements throughout its Petition. A petition for reconsideration must “request that the commission change the outcome with respect to one or more issues determined by the commission’s final order” and “must clearly identify each portion of the challenged order that it contends is erroneous or incomplete.”<sup>2/</sup>

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<sup>1/</sup> PacifiCorp’s request to reconsider and revise the intra-hour wind integration adjustment by about \$46,000 may be a valid adjustment; however, the Commission is within its authority to reject this request because the alleged “error” is due to PacifiCorp’s failure to explain its rebuttal adjustments. Further, this adjustment is minor in light of the significant rate increase awarded.

<sup>2/</sup> WAC § 480-07-850(1)&(2).

Therefore, a petition for reconsideration is only allowed to correct omissions and errors of fact or law.

4 The Commission has explained that petitions for reconsideration are not appropriate to reargue or relitigate issues that were fully developed in the proceeding, and a petition for reconsideration is not warranted merely because a party disagrees with the final order. Specifically, the Commission has repeatedly explained that:

A petition for reconsideration must demonstrate errors of law, or of facts not reasonably available to the petitioner at the time of entry of an order. A petition that cites no evidence that the Commission has not considered, and merely restates arguments the Commission thoroughly considered in its final order, states no basis for relief. A petition for reconsideration is not a second opportunity to litigate issues which were fully developed prior to entry of the final order and which were discussed and decided in the final order. The mere fact that a party disagrees with a final order does not state a basis for reconsideration.<sup>3/</sup>

The limited purpose and extent of reconsideration is reflected in the fact that parties only have ten calendar days to seek reconsideration.<sup>4/</sup>

5 PacifiCorp ignores this precedent and repeats arguments it made in earlier briefing, including simply copying and pasting portions of earlier briefs. In addition, PacifiCorp is using its Petition to bolster rejected arguments by citing additional portions of the record, and

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<sup>3/</sup> In re the Matter of the Application of Avista Corp. for Authority to Sell Its Interest in the Coal-Fired Centralia Power Plant, Docket No. UE-991255 et al., Fourth Supp. Order ¶ 40 (Apr. 21, 2000) (emphasis added and internal citations omitted); see also WUTC v. Olympic Pipe Line Co., Docket No. TO-011472, Eighth Supp. Order ¶¶ 13, 15 (Mar. 29, 2002). (a petition will be denied where the petitioner points to no error of fact, instead “continues to support the factual theories that it advanced at the hearing” and the petition “is merely a restatement of its position at hearing;” stating, in part, the matter that petitioner seeks to have reconsidered “was contested; the Commission considered the Company’s factual assertions at hearing; and the Commission declined to accept the Company’s position as to certain of the facts”); WUTC v. Puget Sound Energy, Inc., Docket No. UE-011163, Seventh Supp. Order ¶¶ 18, 22-23 (Oct. 24, 2001) (finding that PSE failed to meet its burden of demonstrating a basis for reconsideration where it had not shown error in the final order or that the order was incomplete).

<sup>4/</sup> WAC § 480-07-850(1).

slightly revising its arguments now that the Company has the benefit of reading the Commission's Final Order. The Commission should reject PacifiCorp's Petition and remind all parties of the limited purpose for reconsideration.

**B. Net Power Costs**

**1. The Commission's Decision to Exclude the DC Intertie Is Supported by the Record**

6 PacifiCorp argues that the Commission's decision regarding the DC Intertie should be reversed because the "Commission's conclusion that the record shows that the DC Intertie will not be used in the rate effective period is incorrect."<sup>5/</sup> First, PacifiCorp's claim that the DC Intertie will be used in the rate effective period repeats verbatim the factual arguments raised in the Company's initial and reply briefs.<sup>6/</sup> Next, the Company makes a new argument that the Commission should give greater weight to out of context and unsupported statements made at the hearing than the information provided in its own discovery responses and the pre-filed testimony of ICNU witness Randall Falkenberg and Staff witness Alan Buckley.<sup>7/</sup> The evidence in the record supports the Commission's conclusions that PacifiCorp did not meet its burden of proof to show that the DC Intertie benefits ratepayers and is used and useful.

7 PacifiCorp failed to present adequate evidence to establish that the DC Intertie will be used and useful during the rate year, did not show that it managed the resource to provide a benefit to ratepayers, and failed to prove that the resource will be used in the future.<sup>8/</sup> Both ICNU and Staff investigated the Company's use of the DC Intertie in the discovery process and

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<sup>5/</sup> Petition ¶ 31.  
<sup>6/</sup> Compare PacifiCorp Initial Brief ¶ 79 with Petition ¶ 31.  
<sup>7/</sup> Petition ¶¶ 31-32.  
<sup>8/</sup> Final Order at ¶¶ 148-51.

the Company failed to present any evidence that there were contracts to use the DC Intertie in the test period, that the resource would be used during the test period, or that the Company has demonstrated or calculated any ratepayer benefits.<sup>9/</sup> In its rebuttal testimony, PacifiCorp did not dispute that there are no transactions modeled in the test period, but primarily argued that the Company prudently entered into the contact 16 years ago and made vague claims that the resource could be used as a hedge in the future.<sup>10/</sup> Thus, the Company presented no evidence in discovery or pre-filed testimony that the DC Intertie would be used during the test period.<sup>11/</sup>

8 PacifiCorp’s only “evidence” that the DC Intertie may be used during the test period comes from statements made at the cross examination hearing.<sup>12/</sup> For example, the Company cherry picks a hearing statement by Mr. Falkenberg to argue inaccurately that ICNU “conceded that the Company uses the DC Intertie to purchase power.”<sup>13/</sup> Mr. Falkenberg’s full statement at the hearing shows his “concession” was concerning previous years and not the test period. Further, Mr. Falkenberg explained “that the dollar amount wasn’t very substantial” in past years, and that the Company proposal in this case was to assign 100% of the costs of the Intertie to customers and it produced “zero percent of the benefits” to customers.<sup>14/</sup> Similarly, Mr. Duvall’s unsolicited statement regarding past transactions at the California market does not provide evidence that the DC Intertie will be used during the rate period, dispute the evidence

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<sup>9/</sup> Falkenberg, Exh. No. RJF-1CT at 33:1—34:6; Buckley, Exh. No. APB-1CT at 18:13—19:23.

<sup>10/</sup> Duvall, Exh. No. GND-5T at 40:18—43:22.

<sup>11/</sup> Id.

<sup>12/</sup> Petition ¶ 31.

<sup>13/</sup> PacifiCorp Initial Brief ¶ 79; Petition ¶ 31.

<sup>14/</sup> Falkenberg, TR. 657:10—659:22.

that there are no contracts to use this resource during the test period, or provide any calculation of any alleged benefits associated with the resource.<sup>15/</sup>

9           PacifiCorp argues that these out of context hearing statements are sufficient to meet its burden of proof. The Commission appropriately relied upon the voluminous testimony and discovery responses demonstrating that there are not likely to be transactions at the DC Intertie during the test period and that PacifiCorp’s proposal was to assign to ratepayers all of the costs of the DC Intertie with none of the alleged benefits.<sup>16/</sup> Simply put, PacifiCorp had more than sufficient opportunity to argue that the DC Intertie would be actually used and that alleged usage would result in quantifiable benefits to ratepayers, but PacifiCorp did not provide such information at any time during the case, and quote-mining the hearing transcript is not sufficient to meet the Company’s burden of proof.

**2. The Commission’s Arbitrage Adjustment is Not Based on Any Errors**

10           PacifiCorp disagrees with the Commission’s conclusion that the Company did not dispute the accuracy of ICNU’s arbitrage adjustment numbers.<sup>17/</sup> PacifiCorp claims that it actually challenged the accuracy and completeness of ICNU’s calculations on the grounds that: 1) declining sales numbers support use of the most recent year rather than Mr. Falkenberg’s four year average; and 2) the overall adjustment would be lower if trading margins were included in the adjustment.<sup>18/</sup> PacifiCorp’s disagreement with the manner in which the arbitrage adjustment is calculated does not mean that there are any errors or omissions.

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<sup>15/</sup> Duvall, TR. 303:25—304:8; Falkenberg, Exh. No. RJF-1CT at 33:1—34:6; Duvall, Exh. No. GND-5T at 40:18—43:22.

<sup>16/</sup> Petition ¶ 32.

<sup>17/</sup> Id. at ¶ 33.

<sup>18/</sup> Id. at ¶ 34.

11 PacifiCorp’s argument that trading margins should be included in the arbitrage adjustment does not address the accuracy of the adjustment, but simply renews the Company’s disagreement with the types of transactions that should be included. As ICNU’s testimony and briefing explained, the arbitrage adjustment should include arbitrage transactions, but trading margins should be excluded because they are risky transactions and PacifiCorp’s responsibility.<sup>19/</sup> The Company did not dispute ICNU’s calculation of the arbitrage sales, but argued that trading transactions should be included.<sup>20/</sup> This issue was presented to, and resolved by, the Commission without error.

12 The Company also argues that it challenged ICNU’s adjustment as not being representative of sales during the test period because PacifiCorp “argued that the low sales numbers from the most recent year undermined the basis for the adjustment in the first instance.”<sup>21/</sup> The Company argued in briefing that the use of the most recent year instead of a four-year average would produce a smaller revenue requirement adjustment, but the Company never presented any evidence or argument that use of a single year would more accurately estimate the arbitrage amounts that are expected to occur during the test period.<sup>22/</sup> Simply because an adjustment is larger or smaller does not bear upon its accuracy, and the evidence supports the recommendations of Messrs. Buckley and Falkenberg that a four year average most accurately estimates the arbitrage margins that will be anticipated during the rate effective period.

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<sup>19/</sup> ICNU Initial Brief ¶¶ 54-60; Falkenberg, Exh. No. RJF-1CT at 8:22—9:6; Buckley, Exh. No. APB-1CT at 8:17—9:2.

<sup>20/</sup> PacifiCorp Initial Brief ¶¶ 70, 72; PacifiCorp Reply Brief ¶ 51.

<sup>21/</sup> Petition ¶ 34.

<sup>22/</sup> Id.

### 3. The Commission Appropriately Removed the Non-Owned Wind Integration Costs from Rates

13 PacifiCorp argues that the Commission erred when it concluded that the Company did not meet its burden of proof to establish that its wind integration costs were known and measurable.<sup>23/</sup> Separately, the Company argues that the Supremacy Clause of the United States Constitution does not require the Commission to charge retail ratepayers the costs associated with non-owned wind generators.<sup>24/</sup> The record fully supports the Commission’s conclusions that the non-owned intra-hour wind integration costs are not known and measurable and likely inflated. PacifiCorp’s arguments regarding the Supremacy Clause merely repeat its previously raised concerns, which were rejected.<sup>25/</sup> The Supremacy Clause does not require the WUTC to pass to retail ratepayers costs that the Federal Energy Regulatory Commission (“FERC”) has not approved as part of PacifiCorp’s wholesale transmission rates.

14 The Commission correctly concluded that: 1) the huge increase in intra-hour wind integration costs was not supported by substantial evidence in the record; and 2) the Company did not meet its burden of proof that these costs were known and measurable. ICNU and Staff submitted extensive testimony challenging PacifiCorp’s new wind integration calculations, and the Company even agreed with some of these complaints removing certain wind integration costs from its filing.<sup>26/</sup> The Company’s disagreement with the Commission’s reliance upon this evidence is not grounds for reconsideration.

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<sup>23/</sup> Petition ¶¶ 35-36.

<sup>24/</sup> Id. ¶¶ 35-41.

<sup>25/</sup> Final Order ¶¶ 125-26; PacifiCorp Initial Brief ¶¶ 81-85.

<sup>26/</sup> Falkenberg, Exh. No. RJF-1CT at 40:5—42:17; Buckley, Exh. No. APB-1CT at 21:9—23:18; Duvall, Exh. No. GND-5T at 28:1—29:10.



In addition, as already fully explained in ICNU's and Staff's briefs and the WUTC order, PacifiCorp's Supremacy Clause arguments are without merit. PacifiCorp is simply using the reconsideration process as an improper attempt to respond to ICNU's and Staff's reply briefs, and the Final Order. The Petition relies upon Mississippi Power & Light Co. v. Mississippi, to argue that Washington retail customers must pay for any costs that the Company allegedly incurs to provide service to its wholesale customers.<sup>27/</sup> The U. S. Supreme Court has made it clear that a state regulatory commission cannot collaterally attack a FERC rate determination and must pass through the rates or charges in a FERC approved rate.<sup>28/</sup> The Supreme Court's conclusion is based on the well accepted principle that the FERC approved rate is just and reasonable and that a state commission cannot assume that a different rate is appropriate.<sup>29/</sup>

In essence, PacifiCorp's argument is that any expense the Company claims is related to serving its wholesale customers and that the Company claims is not being recovered in its wholesale transmission rates must be fully paid for by its retail customers. As explained in ICNU's earlier briefing, the cases cited by PacifiCorp do not stand for this nonsensical interpretation. If the WUTC were to find that retail ratepayers must pay higher rates because PacifiCorp's transmission rates are insufficient to recover its costs or should include an intra-hour wind integration charge, then essentially the WUTC would be challenging FERC's previous determinations that PacifiCorp's transmission rates are fair, just, reasonable and sufficient. Thus, the WUTC would violate the Supremacy Clause by concluding that PacifiCorp's transmission

<sup>27/</sup> Petition ¶¶ 38 citing Mississippi Power & Light Co. v. Mississippi, 487 U.S. 354, 369-70 (1988). PacifiCorp is essentially rearguing its preemption argument raised in its Initial Brief at ¶¶ 81-82.

<sup>28/</sup> Mississippi Power & Light Co., 487 U.S. at 369-75.

<sup>29/</sup> Id. at 371.

rates are not reasonable.<sup>30/</sup> If PacifiCorp believes its wholesale transmission rates do not fully compensate it for the costs it incurs to serve its wholesale transmission customers, then the Company should request that FERC approve new transmission rates.

#### **4. PacifiCorp's \$46,418 Wind Integration Revision**

17 PacifiCorp proposes that the Commission's \$518,692 intra-hour wind integration adjustment should be reduced by \$46,418 to account for the fact that the Company's rebuttal case adopted part of an ICNU wind integration adjustment.<sup>31/</sup> The Commission's order agreed with both ICNU and Staff regarding intra-hour wind integration costs, but specifically adopted Staff's intra-hour wind integration calculation. PacifiCorp now argues that Staff's wind integration amount should be reduced because the Company's rebuttal testimony accepting part of ICNU's adjustment should also be considered when adopting part of Staff's adjustment.

18 ICNU agrees in principle that PacifiCorp's rebuttal testimony accepting part of ICNU's wind integration adjustment should in theory reduce the value of Staff's wind integration adjustment. PacifiCorp, however, did not identify that its adjustment should also remove a portion of Staff's adjustment when it filed its rebuttal testimony, and the first estimate of how PacifiCorp's rebuttal testimony would alter Staff's adjustment appeared in this Petition. Thus, any "error" in the Commission's order is due to the Company's negligence. In addition, ICNU does not believe that it is generally appropriate for utilities to correct their own failure to provide appropriate information to the Commission in a reconsideration request, as it may deprive other parties of an opportunity to evaluate and respond.

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<sup>30/</sup> Nantahala Power & Light Co. v. Thornberg, 476 U.S. 953 (1986) ("Once FERC sets such a rate, a State may not conclude in setting retail rates that the FERC-approved wholesale rates are unreasonable").

<sup>31/</sup> Petition ¶¶ 42-45.

**5. ICNU’s Minimum Loading and Deration Adjustments Correct Errors in GRID that Unnecessarily Inflate Power Costs**

19 PacifiCorp argues that the Commission’s adoption of ICNU’s minimum loading and deration adjustments “is erroneous and not based on substantial evidence” because the Commission’s conclusion that ICNU’s adjustment “appears” to be more accurate is too “ambiguous.”<sup>32/</sup> PacifiCorp also requests that the Commission reconsider its conclusion because the Company argued that its approach was better.<sup>33/</sup> Not only does PacifiCorp repeat arguments raised in its testimony and previous briefs, but ICNU also notes that PacifiCorp appears to have put more effort into addressing these issues in its Petition than the Company did in its previous rounds of briefing.<sup>34/</sup>

20 PacifiCorp claims that the Commission’s conclusions are not based on substantial evidence, but the Company notably does not explain the meaning of the legal standard. Substantial evidence exists if a rational, fair minded person would be convinced by it.<sup>35/</sup> Substantial evidence does not mean the absence of contrary evidence, but that the evidence and reasonable inferences viewed in the manner most favorable to the prevailing party supports the factual conclusions.<sup>36/</sup> Not only are the Commission’s conclusions supported by substantial evidence, but the Commission has corrected a serious defect in the manner in which PacifiCorp models minimum loading and derations.

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<sup>32/</sup> Id. at ¶¶ 47-48.

<sup>33/</sup> Id.

<sup>34/</sup> PacifiCorp’s Petition addresses minimum loading and heat rates issues in three paragraphs in the Petition, while the Company addressed these complex issues in a total of two total paragraphs in its earlier briefing. Petition ¶¶ 46-48; PacifiCorp Opening Brief ¶ 94; PacifiCorp Reply Brief ¶ 66.

<sup>35/</sup> Rogers Potato Serv., LLC v. Countrywide Potato, LLC, 152 Wn.2d 387, 391 (2004).

<sup>36/</sup> Ongom v. State Dept. of Health, 124 Wn. App. 935, 949 (2005).

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PacifiCorp claims that the Commission’s conclusions are erroneous and not based on substantial evidence because the Company testified to alleged flaws in ICNU’s deration and minimum loading adjustments.<sup>37/</sup> Specifically, PacifiCorp claims that: 1) the deration adjustment will only apply when a unit is dispatched at its maximum capacity; 2) ICNU’s proposal would understate the heat rate; and 3) ICNU’s proposal is unrealistic because it reduces the minimum generating of units below their technical capability.<sup>38/</sup> PacifiCorp raised each of these arguments in its testimony and initial brief, and they all were rebutted in testimony and briefing.<sup>39/</sup>

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ICNU explained that Mr. Falkenberg’s proposal does not inflate heat rates, and that PacifiCorp’s concerns only apply to the very small amount of time when generation units operate between the minimum and maximum derated capacities.<sup>40/</sup> Thus, even if PacifiCorp were correct, the Company has not addressed the much larger flaws, which must be fixed since PacifiCorp uses a deration approach to modeling forced outages.<sup>41/</sup> Finally, ICNU also conclusively rebutted PacifiCorp’s claims that Mr. Falkenberg’s approach was “unrealistic” as: 1) the entire deration approach is already unrealistic “because it models each thermal unit as never being able to run at its maximum capacity;” and 2) PacifiCorp’s approach ignores that outages can occur when the unit is expected to operate at minimum capacity.<sup>42/</sup> These issues

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<sup>37/</sup> Petition ¶ 47.

<sup>38/</sup> Id.

<sup>39/</sup> PacifiCorp Initial Brief ¶ 94; ICNU Initial Brief ¶¶ 77-84.

<sup>40/</sup> ICNU Initial Brief ¶ 84; Falkenberg, Exh. No. RJF-1CT at 57:4—58:4.

<sup>41/</sup> ICNU Initial Brief ¶ 84; Re Commission Investigation into Forecasting Forced Outage Rates for Electric Generating Units, Oregon Docket No. UM 1355, Order No. 10-414 at 8 (Oct. 22, 2010).

<sup>42/</sup> ICNU Initial Brief ¶ 80.

were fully addressed and PacifiCorp is not entitled to reconsideration by merely expanding upon its previously raised arguments.

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PacifiCorp also argues that the Commission did not address all of its arguments, and that the Commission’s conclusion that ICNU’s proposal “appears” to be better represent the usable range of generation unit and better match the heat rate curve with the derated capacity are inappropriately “ambiguous” statements.<sup>43/</sup> PacifiCorp cites no cases to support its novel claims that the Commission must specifically rule on each and every argument in support of a party’s position or that the Commission cannot adopt the position that best appears to be the most accurate.<sup>44/</sup> A common meaning for “appears” is simply that the facts are “obvious or easily perceived; [to] be clear or made clear by evidence.”<sup>45/</sup> In addition, it is not unusual for Washington courts to approve lower court and administrative actions based on the conclusion that they “appear” to be correct.<sup>46/</sup> At a minimum, PacifiCorp has failed to meet its burden of proof if the Company cannot even establish that its position “appears” to be accurate.

### **C. Return on Equity**

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PacifiCorp is seeking reconsideration of the Commission’s order setting the Company’s return on equity (“ROE”) at 9.8%.<sup>47/</sup> PacifiCorp largely repeats its previous arguments, but modifies them to mischaracterize the Commission’s order in an effort to point out non-existent errors and inconsistencies. Notably, PacifiCorp appears to have abandoned its

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<sup>43/</sup> Petition ¶¶ 48.

<sup>44/</sup> Even in 125 pages, it is impossible for the Commission to address all arguments in its Final Order, when the record contains 25 witnesses and over 3,200 pages of documents, not including workpapers. Final Order ¶ 7.

<sup>45/</sup> <http://dictionary.reference.com/browse/appears>.

<sup>46/</sup> E.g., Federal Signal Corp. v. Safety Factors, 125 Wn.2d 413, 439 (1994).

<sup>47/</sup> Petition ¶¶ 49-64.

original request for a 10.6% ROE, as the Company repeatedly argues that the evidence supports an ROE in the low 10% range.<sup>48/</sup> The Company, however, presented no evidence supporting a low 10% range. Although ICNU argued for a lower 9.5% ROE, there is substantial evidence in the record to support a 9.8% ROE, and there are no errors in the Commission's analysis. As explained by the Commission, there is a range of reasonable and appropriate ROEs, and the Commission appropriately utilized its informed judgment based on the totality of the evidence to adopt a 9.8% ROE.<sup>49/</sup>

### **1. The Commission's Order Exhaustively Considers Changed Conditions**

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Despite the Commission's repeated discussion of the changes in market conditions, PacifiCorp argues that the Commission's traditional analysis regarding what has changed since the last determination of the Company's ROE "is entirely absent in the Order."<sup>50/</sup> PacifiCorp's real complaint is not that the Commission did not consider the market changes, but that the Commission did not agree with PacifiCorp's one-sided characterization of those changes. The Company argues that a reduction in its ROE "cannot be justified" when: 1) interest rates are similar to those during the Company's 2005 rate case; 2) national utility average ROEs are also similar; and 3) utility stocks are performing worse than the market.<sup>51/</sup> PacifiCorp made these claims in its earlier briefing,<sup>52/</sup> and once again it is impermissible to use reconsideration merely to repeat arguments that were not persuasive in earlier briefing.

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<sup>48/</sup> *Id.* ¶¶ 50-52, 54, 62.  
<sup>49/</sup> Order ¶¶ 93-94.  
<sup>50/</sup> Petition ¶¶ 49-50.  
<sup>51/</sup> *Id.* at ¶¶ 50-54.  
<sup>52/</sup> PacifiCorp Initial Brief ¶¶ 10-13.

The Commission’s ROE analysis in this case started with a consideration of the changes that have occurred since the Company’s last litigated rate case in which cost of capital issues were decided.<sup>53/</sup> The Commission explained that there have been significant changes, including a severe economic recession and a number of years of ownership by Berkshire Hathaway, and these facts guided the Commission’s analysis of all cost of capital issues.<sup>54/</sup> For example, the Commission discussed the Company’s arguments regarding utility stocks, and specifically rejected its argument stating that financial conditions have returned to more normal conditions and that the “evidence is clear that utility stocks are less volatile than non-utility stocks and, in a period of turmoil, are generally considered safer investments.”<sup>55/</sup> The Commission relied upon Mr. Gorman’s analysis that responded to PacifiCorp’s arguments regarding the lack of changes in interest rates and explained why the ROE models produce different results given other changes in the economy.<sup>56/</sup> Finally, the downward-trending ROEs referred to by the Commission are well-supported by recent orders in the Northwest.<sup>57/</sup>

## 2. The Commission’s Order Properly Discounts Long-Term Growth Rates

PacifiCorp argues that the Commission improperly discounts long-term growth rates in the discounted cash flow (“DCF”) model because the DCF model requires a long-term growth rate.<sup>58/</sup> The Commission was appropriately skeptical of use of long-term growth rates, and its reliance upon short-term growth rates is not inconsistent with how the DCF model

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<sup>53/</sup> Order ¶ 76.

<sup>54/</sup> Id. at ¶¶ 39-42, 76, 81, 89-92.

<sup>55/</sup> Id. at ¶ 81.

<sup>56/</sup> Id.; Gorman, TR. 480:16—481:23.

<sup>57/</sup> Order ¶ 92; see also Re Portland General Electric Co., Docket No. UE 215, Order No. 10-478 (Dec. 17, 2010) (PGE’s 10% ROE is well below PacifiCorp’s requested 10.6% ROE or its last approved 10.2% ROE).

<sup>58/</sup> Petition ¶¶ 55-56.

operates. As explained by Mr. Gorman and accepted by the Commission, more reasonable growth rates can be used in the DCF model to produce more accurate cost of capital estimates.<sup>59/</sup> PacifiCorp’s argument is strange, because if the Commission agrees with the Company that the DCF model requires the use of only long-term growth rates, then the most logical result is for the Commission to rely more heavily upon the risk premium and capital asset pricing model (“CAPM”), which produce midpoint ROEs well below 9.8%.<sup>60/</sup> Therefore, if the Commission agrees with PacifiCorp that the DCF model requires a long-term growth rate, then ICNU recommends that the Commission rely more heavily on the other models to lower the Company’s ROE to 9.5% on reconsideration.

### **3. The Commission Appropriately Accounted for Security Analysts’ Estimates**

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The Company argues that if the Commission relies upon near-term forecasts, then the Commission should adopt a 10.5% ROE based on only Mr. Gorman’s constant growth DCF model.<sup>61/</sup> The Company’s made a shorter version of this argument in its initial brief,<sup>62/</sup> and the Company is using the reconsideration process to refine its position now that it has the benefit of reviewing the Commission’s conclusions and analysis in its Final Order. PacifiCorp argues that the Commission should only rely upon Mr. Gorman’s constant growth DCF model results because, while security analysts’ long-term growth rates are too high, their near-term growth rates are accurate.<sup>63/</sup> The Commission should again reject PacifiCorp’s argument, because the

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<sup>59/</sup> Final Order ¶¶ 82-85.  
<sup>60/</sup> *Id.* at ¶ 93.  
<sup>61/</sup> Petition ¶¶ 57-59.  
<sup>62/</sup> PacifiCorp Initial Brief ¶¶ 15-16.  
<sup>63/</sup> Petition ¶¶ 57-59.



Commission correctly relied upon the broad range of Mr. Gorman’s model results, including the average of his three DCF analyses.

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Mr. Gorman presented the Commission with three DCF model results ranging from 10.5% to 9.14%, averaging 9.85%.<sup>64/</sup> Mr. Gorman explained that his constant growth DCF analysis that produced a 10.5% ROE should be discounted because it does not provide a reasonable estimate of long-term sustainable growth, and the constant DCF model is “based on a growth rate that is sustainable in the long term . . . .”<sup>65/</sup> Thus, the entire constant growth DCF results are suspect, because the model produces inaccurate estimates of long-term sustainable growth. Even though Mr. Gorman had strong concerns about the constant growth DCF model, he did not reject its results, but instead averaged it with other results to produce a more accurate and reasonable DCF result.<sup>66/</sup>

#### **4. PacifiCorp’s Arguments, Not the Commission’s Order, Are Contradictory**

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PacifiCorp claims that the Commission’s conclusion that financial markets are returning to more normal conditions is inconsistent with its conclusion that utility stocks are generally considered to be less volatile and safer investments in times of turmoil.<sup>67/</sup> PacifiCorp then argues that utility stocks have not participated equally in the current stock market rally, and this means that PacifiCorp needs a higher ROE to attract capital.<sup>68/</sup> PacifiCorp’s reconsideration arguments are in direct opposition to its position in testimony and briefing that claimed utility

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<sup>64/</sup> Gorman, Exh. No. MPG-1T at 27:5-7.

<sup>65/</sup> Id. at 27:7-15.

<sup>66/</sup> Id. at 27:7-18.

<sup>67/</sup> Petition ¶¶ 60-61.

<sup>68/</sup> Id. at ¶ 61.

stocks remained volatile, which warranted a higher ROE.<sup>69/</sup> According to PacifiCorp, both normal and volatile utility stock conditions warrant a higher ROE, with the only constant being that the Company will argue for a higher ROE regardless of the economic conditions.

31                   The Commission’s analysis of the current market conditions and their impact upon rate of return analysis is internally consistent and accurate. The Commission recognized that the U.S. economy has experienced a severe economic recession and that economic conditions have improved but not entirely returned to normal.<sup>70/</sup> Utility stocks are stronger during poor economic conditions because they are considered safer investments, and while utility stocks have not recovered as much as non-utility stocks, this is what should be expected because utility stocks were not as hurt as much as non-utility stocks.<sup>71/</sup> Thus, utility stocks are not expected to underperform the market generally and do not need higher ROEs to spur investment, but utility stocks should instead improve with the rest of the market, with their improvement being less dramatic because they held greater value during the recession.

#### **5.     The Commission’s CAPM Analysis Is Consistent With Prior WUTC Precedent**

32                   PacifiCorp argues that the Commission failed to follow its recent decision (in the Puget Sound Energy (“PSE”) rate case) that it would accord the CAPM diminished weight because of the poor economic conditions.<sup>72/</sup> PacifiCorp raised these arguments in its briefing,<sup>73/</sup>

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<sup>69/</sup> PacifiCorp Initial Brief ¶¶ 13-14.

<sup>70/</sup> Final Order ¶¶ 76, 81.

<sup>71/</sup> Id.; Gorman, TR. 443:4—444:9.

<sup>72/</sup> Petition ¶ 62.

<sup>73/</sup> PacifiCorp Initial Brief ¶¶ 32-34.

and the Commission’s order fully considered them when deciding to utilize the CAPM as a useful check on the DCF and risk premium analysis.<sup>74/</sup>

33 As recognized by the Commission, the CAPM analysis remains a valid tool to evaluate the reasonableness of the other ROE models.<sup>75/</sup> In explaining this point, the Commission relied on the recent PSE case to reaffirm its long-held position that it is important to consider multiple perspectives and models, especially in times of financial turmoil.<sup>76/</sup> Financial conditions have steadily improved over the past six to nine months, and the CAPM remains a valid tool to calculate utility ROEs.

34 The Commission’s 9.8% ROE is based primarily upon ICNU’s DCF and risk premium analysis, and the Commission only used the CAPM analysis as a “check” to support the other models’ conclusions that a lower ROE is justified.<sup>77/</sup> If the Commission had accorded the CAPM as much weight as the DCF and risk premium analysis, then the Commission would have adopted a 9.5% ROE rather than the higher 9.8% ROE.<sup>78/</sup>

## **6. The Commission Appropriately Rejected Dr. Hadaway’s Regression Analysis**

35 PacifiCorp misrepresents the evidentiary record when it claims that there is “no evidence in the record” to reject Dr. Hadaway’s regression analysis and that there was “no evidentiary basis” to reject the analysis.<sup>79/</sup> PacifiCorp repeats the arguments it made in its briefing that Mr. Gorman “ignored” the relationship in his analysis.<sup>80/</sup> As explained by Mr.

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<sup>74/</sup> Final Order ¶¶ 88-94.

<sup>75/</sup> Id.

<sup>76/</sup> Id. at ¶ 91.

<sup>77/</sup> Id. at n.130, ¶ 93.

<sup>78/</sup> Gorman, Exh. No. MPG-1T at 37:7-14.

<sup>79/</sup> Petition ¶ 63.

<sup>80/</sup> PacifiCorp Initial Brief ¶ 18.

Gorman and in ICNU’s legal briefs, the inverse relationship should not occur during times without significant interest rate volatility, which is not expected to occur during the rate effective period.<sup>81/</sup> Mr. Gorman’s testimony that the inverse relationship analysis “is a flawed methodology and does not produce accurate or reliable risk premium estimates,” provides ample support for the Commission to reject Dr. Hadaway’s recommendation.<sup>82/</sup>

36                   PacifiCorp also seeks reconsideration of the Commission’s finding that it was “skeptical” that the inverse relationship formula could produce “such a precise result.”<sup>83/</sup> PacifiCorp asserts that the CAPM uses a similar statistical analysis and that the Commission should reject the CAPM if it does not adopt Dr. Hadaway’s inverse relationship analysis.<sup>84/</sup> Unlike most of the Company’s reconsideration request, this is a new argument raised for the first time on reconsideration. Although the CAPM is widely used for estimating ROEs, PacifiCorp has been opposed to the use of the CAPM throughout this proceeding, but the Company did not submit any evidence in support of its arguments regarding the alleged similarity between the CAPM and the inverse relationship. Notably, PacifiCorp cites no testimony or other support for its claims.<sup>85/</sup> ICNU disagrees that the two methods are comparable, and there is no basis in the record for such a conclusion.

#### **D.     Capital Structure**

37                   PacifiCorp seeks reconsideration of the Commission’s adoption of Mr. Gorman’s capital structure, which determined the Company’s equity ratio based on estimating the equity

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<sup>81/</sup> ICNU Initial -Brief ¶ 21; ICNU Reply Brief ¶ 9.

<sup>82/</sup> Gorman, Exh. No. MPG-1T at 50:18-21.

<sup>83/</sup> Petition ¶ 64.

<sup>84/</sup> Id.

<sup>85/</sup> Id.

used to support plant investments.<sup>86/</sup> PacifiCorp argues that the Commission: 1) erroneously removed \$360 million of equity from the Company's balance sheets; 2) failed to consider the impact of Mr. Gorman's recommendation on the Company's credit metrics; and 3) relied upon the wrong legal standard.<sup>87/</sup> Again, PacifiCorp made all of these arguments previously in testimony and legal briefing, and the Company is merely disagreeing with the Commission's conclusions instead of identifying any errors or omissions.

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PacifiCorp's reconsideration request notably does not disagree with the Commission's fundamental conclusion that "the Company's proposed capital structure contains too much equity, which tips the balance too far in favor of investor interests over ratepayers."<sup>88/</sup> The Commission's options to remedy PacifiCorp's harmful equity ratio were either to fashion its own hypothetical equity ratio or to adopt the proposals of Messrs. Gorman or Elgin. Mr. Gorman's recommendations were well-supported and address the problem of PacifiCorp unnecessarily expanding its equity ratio in order to promote shareholder benefits over a more cost-effective and economic equity ratio. If the Commission, however, agrees with PacifiCorp's previously raised arguments regarding Mr. Gorman's equity ratio, then ICNU recommends that the Commission fashion a hypothetical equity ratio based upon the overall recommendations of Messrs. Gorman and Elgin.

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<sup>86/</sup> Final Order ¶¶ 40, 42.

<sup>87/</sup> Petition ¶¶ 65-71.

<sup>88/</sup> Final Order ¶ 39.

**1. The Commission Did Not Need “Clear and Convincing” Evidence to Adopt Mr. Gorman’s Capital Structure**

39 PacifiCorp argues throughout its Petition, previous briefing and in testimony that the Commission cannot adopt a hypothetical capital structure unless there is “a clear and compelling reason to do so.”<sup>89/</sup> PacifiCorp provides no legal basis for this “clear and convincing” standard. PacifiCorp ignores the totality of the relevant Commission precedent, under which the Commission has adopted hypothetical capital structures in cases when there is “good reason” to do so.<sup>90/</sup> Regardless, Mid-American Energy Holdings Company’s (“MEHC”) efforts to build up PacifiCorp’s equity in an uneconomical manner provide ample evidence to adopt a hypothetical capital structure.

**2. Mr. Gorman’s Equity Adjustments Are Well Supported**

40 PacifiCorp argues that specific aspects of Mr. Gorman’s equity adjustment are incorrect or erroneous, claiming that: 1) it was inappropriate to remove short-term investments; 2) Mr. Gorman’s recommendation was one-sided; 3) accumulated amortization of the acquisition adjustment should have been removed; and 4) adoption of Staff’s cash working capital (“CWC”) adjustment is inconsistent with Mr. Gorman’s equity ratio.<sup>91/</sup> PacifiCorp’s arguments are incorrect and unsupported by the record.

41 Mr. Gorman appropriately removed short-term investments, and the Company’s claim that short-term investments should be netted against common equity instead of long-term debt is wrong. Mr. Gorman explained that short-term investments are “cash the Company has on

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<sup>89/</sup> E.g., Petition ¶ 65.

<sup>90/</sup> See Staff Initial Brief ¶¶ 160-162.

<sup>91/</sup> Petition ¶¶ 66-70.

its balance sheet” and the Company has “an abnormal large balance of cash . . . .”<sup>92/</sup> Contrary to PacifiCorp’s claims, there is no accepted practice of netting debt against cash rather than equity, and Mr. Gorman’s approach is correct because “it is reasonable to believe that these short-term investments simply represent a placeholder for all the retained earnings PacifiCorp is retaining in its Company in order to build up its common equity ratio.”<sup>93/</sup> Mr. Gorman’s adjustment was designed to measure the amount of equity PacifiCorp had invested in rate base, and to remove equity that is not invested in plant that is used to provide utility service. His adjustment was required to protect ratepayers from PacifiCorp’s unorthodox and uneconomic practice of retaining all earnings and receiving all equity infusions from MEHC.<sup>94/</sup>

42                   PacifiCorp’s argument regarding the acquisition adjustment is inaccurate and merely an attempt to confuse the record. PacifiCorp claims that Mr. Gorman erroneously excluded the gross amount of the acquisition adjustment without accounting for accumulated amortization.<sup>95/</sup> Mr. Gorman removed the acquisition adjustment because it is not included in Washington rates, and his adjustment is based on the premium PacifiCorp paid for assets above the net book value of the asset. This premium above net book value is referred to as an acquisition adjustment.<sup>96/</sup> Thus, Mr. Gorman’s adjustment is based on the purchase price above net book value. While the book value of assets is depreciated and contributes to the buildup of accumulated depreciation, the acquisition adjustment is not depreciated and does not contribute to the buildup of accumulated depreciation. Contrary to the arguments in the Petition, a careful

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<sup>92/</sup> Gorman, TR. 477:18-21.  
<sup>93/</sup> Gorman, Exh. No. MPG-1T at 14:19-26.  
<sup>94/</sup> Id. at 14:13-26.  
<sup>95/</sup> Petition ¶ 67.  
<sup>96/</sup> Gorman, Exh. No. MPG-1T at 14:7-13.

reading of the testimony establishes that the accumulated amortization referred to in Mr. Williams' testimony addresses the amortization on the plants (i.e., asset book value), which is a different issue from the above book value premium, or the acquisition adjustments, that was removed by Mr. Gorman.<sup>97/</sup>

43                   PacifiCorp repeats its allegation that Mr. Gorman's adjustment is "one-sided" because he excluded certain favorable financings that are located outside of the west control area.<sup>98/</sup> PacifiCorp is correct that Mr. Gorman did not change the jurisdictional allocations for plant in service. Mr. Gorman's adjustment focused on the capital structure used to support its Washington operations but did not provide a complex and comprehensive analysis of which rate base assets are serving Washington.<sup>99/</sup> No party, including PacifiCorp, presented a comprehensive jurisdictional allocation of plant in service, which is not necessary to develop a capital structure that provides "a more reasonable estimate of PacifiCorp's actual cost of capital supporting its utility plant investment."<sup>100/</sup>

44                   Further, PacifiCorp's arguments that the Commission's acceptance of Staff's CWC adjustment requires the Commission to reject Mr. Gorman's equity ratio adjustments are based on erroneous reasoning. Staff's CWC is based on the timing difference between revenue receipts and cash expenditure out flows, and it represents how much cash on hand is needed to run operations.<sup>101/</sup> Mr. Gorman's capital structure adjustment did not include cash deposits, but

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<sup>97/</sup> See Williams, Exh. No. BNW-7T at 18:14—19:10.

<sup>98/</sup> Petition ¶ 68; PacifiCorp Initial Brief ¶ 39; Williams, Exh. No. BNW-7T at 18:14—19:10.

<sup>99/</sup> Gorman, Exh. No. MPG-1T at 13:1—14:7.

<sup>100/</sup> *Id.* at 14:4-7.

<sup>101/</sup> Final Order ¶¶ 290-96.



rather included temporary cash investments that are not yet used for operations.<sup>102/</sup> Mr. Gorman did not adjust PacifiCorp’s common equity for the amount of cash the Company had on its balance sheet, but only adjusted common equity for the temporary cash investment and affiliate loans.<sup>103/</sup> Thus, the two adjustments are different, and there is no inconsistency in the Commission adopting Staff’s CWC adjustment and Mr. Gorman’s capital structure.

### **3. Mr. Gorman’s Recommendations Are Supportive of the Company’s Credit Rating**

45 PacifiCorp argues that the Commission’s order will imperil its credit rating, and that the Commission’s decision “is even more egregious because” Mr. Gorman did not consider certain off balance sheet obligations included in Standard & Poor’s (“S&P”) analysis.<sup>104/</sup> There is nothing new in the Company’s straw man arguments.<sup>105/</sup> Mr. Gorman did not, and the Commission should not, attempt to duplicate the credit metrics of any rating agency.<sup>106/</sup> Mr. Gorman used S&P’s guidelines to determine whether his rate of return would support investment grade credit ratings, but he appropriately excluded third-party debt that was not associated with regulated operations.<sup>107/</sup> PacifiCorp complained about Mr. Gorman’s decision only to use off-balance sheet debt that related to third-party obligations related to utility service,<sup>108/</sup> but the Company never argued that this excluded debt is associated with the cost associated with regulated operations. Mr. Gorman’s adjustment was appropriate, because Washington ratepayers

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<sup>102/</sup> See Gorman, Exh. No. MPG-1T at 13:10—14:26.

<sup>103/</sup> Id.

<sup>104/</sup> Petition ¶ 71.

<sup>105/</sup> PacifiCorp Initial Brief ¶¶ 46-47.

<sup>106/</sup> Gorman, TR. 462:11—463:12.

<sup>107/</sup> Id.

<sup>108/</sup> Petition ¶ 71.

are not responsible for guaranteeing the credit worthiness of debt not related to regulated operations.

46 Further, there is no evidence to support this argument that the order will imperil PacifiCorp's credit rating. PacifiCorp's credit rating is based on the Company's overall credit worthiness from its operations in all six states, and the Company presented no evidence that any actions by the Commission would result in a credit rating downgrade. It is highly speculative and without merit to allege that the Final Order will impact the Company's credit rating, especially given how small its operations are in Washington.

### III. CONCLUSION

47 The Commission should reject PacifiCorp's Petition as a highly inappropriate attempt to reargue issues that have been fully litigated and resolved in the proceeding. The costs and burdens of litigating before the Commission will increase if parties that disagree with the Commission's conclusions are provided another opportunity to refine their arguments after reviewing the Final Order. All of PacifiCorp's power cost and cost of capital reconsideration requests fail to allege any errors or omissions, with the exception of the minor \$46,000 "correction." The Commission should reject the Petition, as the Company merely repeats and refines already rejected arguments.

Dated this 14th day of April, 2011.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Irion Sanger

Melinda J. Davison

Irion Sanger

333 S.W. Taylor, Suite 400

Portland, Oregon 97204

(503) 241-7242 phone

(503) 241-8160 facsimile

mjd@dvclaw.com

ias@dvclaw.com

Of Attorneys for the Industrial Customers of  
Northwest Utilities