

Exhibit No. ___ (DPK-11)
Docket No. UE-050684
Witness: Danny P. Kermode

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

**PACIFICORP, d/b/a Pacific Power &
Light Company, Respondent.**

DOCKET NO. UE-050684

**EXHIBIT TO
TESTIMONY OF**

Danny P. Kermode

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

RE: PACIFICORP GENERAL RATE CASE

PacificCorp's Response to Staff Data Request No. 151

November 3, 2005

UE-050684/PacifiCorp
July 21, 2005
WUTC Staff Data Request 151

WUTC Staff Data Request 151

Re: Malin Midpoint - Adjustment 7.5
Contact: Danny Kermode (360) 664-1253

- (a) Is the Company's Adjustment 7.5 calculated consistent with the Commission's orders regarding the Malin Midpoint safe harbor transaction in Cause No. U-82-12/U-82-35 and U-83-33? Please explain the basis for your answer.
- (b) Does the Company's Adjustment 7.5 reflect the application of the Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standard Number 28 – *Accounting for Sales with Leasebacks*? Please explain the basis for your answer.
- (c) Is it the Company's contention that the FASB 28 method is the same as the method the Commission ordered in Cause Nos. U-82-12/U-82-35 and U-83-33? Please explain the basis for your answer and your contention.

Response to WUTC Staff Data Request 151

- (a) In some respects, the Company's Adjustment 7.5 is not consistent with the Commission's order regarding the Malin Midpoint safe harbor transaction in Cause No. U-82-12/U-82-35 and U-83-33. To the best of the Company's knowledge and belief, that treatment would invalidate the favorable tax treatment of this safe harbor lease transaction, if the intent of the Commission order is both to recognize the cash received as a rate base reduction and recognize amortization in operating results. The Company's Adjustment 7.5 recognizes the sale of the benefits associated with the Malin property and rate base treatment, per FERC accounting rules and Internal Revenue Service normalization rules for ACRS property. The Company's Adjustment 7.5 does not represent a straight-line amortization of the cash received from the sale, the treatment approved in U-83-33, which is both to record a credit for the unamortized balance in rate base and to include amortization in operating results. To the best of the Company's knowledge and belief, to follow the methodology of U-83-33 would violate FERC accounting rules and IRC normalization accounting requirements. The cash amount received by PacifiCorp from Amoco regarding Malin was for investment tax credits and depreciation benefits. This amounted to an accelerated recovery of those tax benefits with the payment from Amoco rather than from the Federal government. As such, the payment is equivalent to the use, by PacifiCorp, of those accelerated tax benefits. Congress recognized this equivalency in Public Law 97-448, enacted January 12, 1983, when it required safe harbor lease transactions for public utility property to be normalized in accordance with sections

168 and 46(f) of the Internal Revenue Code to qualify as leased property. Thus, Congress indicated accounting should be to Accumulated Deferred Income Taxes and Accumulated Deferred Investment Tax Credits in accordance with tax elections in place. The Internal Revenue Service in PLR 8537063 held that the Commission could not require both a cost of service and rate base adjustment for a taxpayer under this method, since the taxpayer in the PLR was under a section 46(f)(2) election. The same would apply to PacifiCorp, except that PacifiCorp is under a 46(f)(1) election. Therefore, to record the amortization of the cash in operating results with the cash as a rate base deduction would violate the normalization rules of the 46(f)(1) election by recording both the ITC amortization in operating results and the ITC unamortized balance as a rate base reduction. This would invalidate the favorable tax treatment of safe harbor lease transaction per Public Law 97-448.

- (b) No, the Company's Adjustment 7.5 does not reflect the application of the Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standard Number 28 – *Accounting for Sales with Leasebacks*. The term "lease", as used in promulgated GAAP, does not include agreements that do not transfer right to use property. A tax safe harbor lease does not transfer the right to use property. Instead, a tax safe harbor lease sells tax benefits in exchange for cash. Therefore, the Company's understanding is that FASB 28 does not apply to tax safe harbor leases.
- (c) No, the Company has not made this contention regarding FASB 28. The Company's understanding is that FASB 28 is not applicable to tax safe harbor leases, as stated in part (b) above. As stated in part (a) above, recognizing both a cost of service and a rate base adjustment would be a violation of the 46(f)(1) ITC normalization rules, which would in turn invalidate the tax safe harbor lease.

Responder: Paul M. Wrigley
Witness: Paul M. Wrigley