

**Exhibit No. \_\_\_ (DPK-12)**  
**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**

*PacifiCorp's Response to Staff Data Request No. 252*

**November 3, 2005**

**WUTC Staff Data Request 252**

Re: Malin Midpoint-Adjustment 7.4  
Contact: Danny Kermode (360) 664-1253

- (a) Please provide a copy of all IRS documents, rulings, or letters (other than Private Letter Ruling 8537063) that support the Company's statement that the Commission treatment of the Malin Midpoint gain prescribed in Cause No. U-82-35 would "...invalidate the favorable tax treatment of this safe harbor lease transaction."
- (b) The Company was audited by the IRS for the tax years 1991 to 1998. Please provide a copy of all IRS documents, rulings, or letters related to any of the eight years of IRS audits that support company's statement that the Commission treatment of the Malin Midpoint gain prescribed in Cause No. U-82-35 would "...invalidate the favorable tax treatment of this safe harbor lease transaction."
- (c) In the twenty-two years since the Commission first ordered the accounting treatment for the Malin Midpoint gain, has the Company received any notice, correspondence or any other document from the IRS that the treatment or the Malin Midpoint gain prescribed by the Commission in Cause No. U-82-35 violates normalization requirements? If so please provide copies of all such documents.
- (d) Please provide all documents not described in parts a-c of this request which are relied upon by PacifiCorp for its position that the Commission treatment of the Malin Midpoint gain would "...invalidate the favorable tax treatment of this safe harbor lease transaction."

**Response to WUTC Staff Data Request 252**

- a) Provided as Attachment WUTC 252 a-1 on the enclosed CD is a copy of the Commerce Clearing House, Inc. Internal Revenue Code Sec. 168 that describes the changes resulting from the 1981 Economic Recovery Tax Act, which is provided here as Attachment WUTC 252 a-2. Code Sec. 168(e)(3)(A) specifies that recovery property described in this code section does not include public utility property if the taxpayer does not use a normalization method of accounting. Qualified lease property means recovery property for all cost basis of safe harbor lease property per Code Sec. 168(f)(8). This means that safe harbor lease property has to be normalized to be qualified lease property. As stated in response to data request WUTC 151, per

Public Law 97-448 passed on January 12, 1983, which is provided here as Attachment WUTC 252 a-3, IRS Code Sec. 168(f)(8) was revised to state specifically that property shall not be treated as qualified leased property unless the requirements of rules similar to the rules of subsection (e)(3) of this section are met. Subsection (e)(3) specifies that the property must follow a normalization method of accounting. The Company chose ACRS for all of its 1981 property, of which Malin was a part. Therefore a normalization method of accounting has to be in place for Malin to qualify for ACRS and for safe harbor lease transaction. Per an article in the *Journal of Institute of Certified Financial Planners* printed shortly after the Act, the Act intended to encourage the full use of ACRS by making significant changes to the tax rules to encourage the use of leasing transactions, of which the safe harbor lease is one.

- b) The treatment of the Malin Midpoint gain was not an issue that was examined by the IRS during the 1991 through 1998 audit cycle.
- c) The Company has not filed any private letter ruling with the Internal Revenue Service because Public Law 97-448 combined with the Economic Recovery Tax Act of 1981 are sufficient to show that normalization accounting has to be used for the safe harbor lease to qualify as a lease transaction under the 1981 Economic Recovery Tax Act.
- d) The three documents described in a) above are all the documents relied upon by PacifiCorp. In the Company's view, if normalization accounting is not utilized for all parts of the Malin transaction, the ACRS election used for Malin would be invalidated, which in turn would invalidate the safe harbor lease transaction.

In addition, since capital assets and the associated tax depreciation are subject to mass asset accounting, and since ACRS was applied to the entire mass asset account, invalidating the ACRS election for one portion of the mass asset account could invalidate the election for the entire mass account and thus could invalidate the ACRS election for all the assets.

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