

Exhibit No. \_\_\_ (DPK-5)  
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**

*Internal Revenue Code Section 168(f)(8) - 1981*

**November 3, 2005**

**Internal Revenue Code Section 168(f)(8) - 1981**

**(8) Special rule for leases**

(A) In general.—In the case of an agreement with respect to qualified leased property, if all of the parties to the agreement characterize such agreement as a lease and elect to have the provisions of this paragraph apply with respect to such agreement, and if the requirements of subparagraph (B) are met, then, for purposes of this subtitle—

(i) such agreement shall be treated as a lease entered into by the parties (and any party which is a corporation described in subparagraph (B)(i)(I) shall be deemed to have entered into the lease in the course of carrying on a trade or business), and

(ii) the lessor shall be treated as the owner of the property and the lessee shall be treated as the lessee of the property.

(B) Certain requirements must be met.—The requirements of this subparagraph are met if—

(i) the lessor is—

(I) a corporation (other than an electing small business corporation (within the meaning of section 1371(b)) or a personal holding company (within the meaning of section 542(a))),

(II) a partnership all of the partners of which are corporations described in subclause (I), or

(III) a grantor trust with respect to which the grantor and all beneficiaries of the trust are described in subclause (I) or (II),

(ii) the minimum investment of the lessor—

(I) at the time the property is first placed in service under the lease, and

(II) at all times during the term of the lease, is not less than 10 percent of the adjusted basis of such property, and

(iii) the term of the lease (including any extensions) does not exceed the greater of—

(I) 90 percent of the useful life of such property for purposes of section 167, or

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(II) 150 percent of the present class life of such property.

(C) No other factors taken into account.—If the requirements of subparagraphs (A) and (B) are met with respect to any transaction described in subparagraph (A), no other factors shall be taken into account in making a determination as to whether subparagraph (A) (i) or (ii) applies with respect to such transaction.

(D) Qualified leased property defined.—For purposes of subparagraph (A), the term 'qualified leased property' means recovery property (other than a qualified rehabilitated building within the meaning of section 48(g)(1) which is—

(i) new section 38 property (as defined in section 48(b)) of the lessor which is leased within 3 months after such property was placed in service and which, if acquired by the lessee, would have been new section 38 property of the lessee,

(ii) property—, which was new section 38 property of the lessee,

(II) which was leased within 3 months after such property was placed in service by the lessee, and

(III) with respect to which the adjusted basis of the lessor does not exceed the adjusted basis of the lessee at the time of the lease, or

(iii) property which is a qualified mass commuting vehicle (as defined in section 103(b)(9)) and which is financed in whole or in part by obligations the interest on which is excludable from income under section 103(a) For purposes of this title (other than this subparagraph), any property described in clause (i) or (ii) to which subparagraph (A) applies shall be deemed originally placed in service not earlier than the date such property is used under the lease. In the case of property placed in service after December 31, 1980, and before the date of the enactment of this subparagraph, this subparagraph shall be applied by submitting 'the date of the enactment of this subparagraph' for 'such property was placed in service'.

(E) Minimum investment.—,

(i) In general.—For purposes of subparagraph (A), the term 'minimum investment' means the amount the lessor has at risk with respect to the property (other than financing from the lessee or a related party of the lessee).

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- (ii) Special rule for purchase requirement.—For purposes of clause (i), an agreement between the lessor and lessee requiring either or both parties to purchase or sell the qualified leased property at some price (whether or not fixed in the agreement) at the end of the lease term shall not affect the amount the lessor is treated as having at risk with respect to the property.
  
- (F) Characterization by parties.—For purposes of this paragraph, any determination as to whether a person is a lessor or lessee or property is leased shall be made on the basis of the characterization of such person or property under the agreement described in subparagraph (A).
  
- (G) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including (but not limited to) regulations consistent with such purposes which limit the aggregate amount of (and timing of) deductions and credits in respect of qualified leased property to the aggregate amount (and the timing) allowable without regard to this paragraph.
  
- (H) Cross reference.—  
For special recapture in cases where lessee acquires qualified leased property, see section 1245.