STOEL RIVES LLP
ATTORNEYS AT LAW

600 University Street, Suite 3600
Seattle, Washington 98101
main 206.624.0900
fax 206.386.7500
www.stoel.com

JASON B. KEYES
Direct (206) 386-7681
jbkeyes@stoel.com

April 27, 2006

ELECTRONIC MAIL
AND HAND DELIVERED
<records@wutc.wa.gov>

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: Docket Nos. UE-050684 and UE-050412

Dear Ms. Washburn:

Enclosed for filing in the consolidated proceedings above are an original and 18 copies of PacifiCorp's Petition for Reconsideration. An electronic copy of the filing has also been sent to the Commission's record center.

Thank you for your assistance.

Sincerely,

Jason B. Keyes

JBK:jlf
Enclosures
cc: Service List

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
In the Matter of the Petition of PACIFICORP, d/b/a PACIFIC POWER & LIGHT COMPANY For an Order Approving Deferral of Costs Related to Declining Hydro Generation	Docket No. UE-050412 PETITION FOR RECONSIDERATION

1 On April 17, 2006, the Washington Utilities and Transportation Commission (the "Commission") issued its Order No. 04 in Docket No. UE-050684[1] (the "Order") rejecting completely the rate request of PacifiCorp (or the "Company"). When this case was commenced nearly one year ago, PacifiCorp sought an increase of $39.2 million (17.9 percent), which was reduced through various adjustments to a final request of $29.8 million (13.5 percent). Following a full and complete examination of the issues over an 11-month period, featuring the testimony of 38 witnesses, 600 exhibits, and 13 transcript volumes including 1,735 pages of text,

[1] The Company is not seeking reconsideration of Order No. 03 in Docket No. UE-050412.

the Commission denied virtually every aspect of the relief requested by the Company. Specifically:

- The Order denies any rate relief – citing the absence of an acceptable inter-jurisdictional cost allocation methodology – in the face of evidence demonstrating a clear need for rate relief under any number of possible cost allocation methodologies.
- The Order denies the request for implementation of a Power Cost Adjustment Mechanism, citing among other things the absence of an acceptable inter-jurisdictional cost allocation methodology, thereby leaving PacifiCorp as the only investor-owned electric utility in Washington without such a mechanism.[2]
- The Order denies the Company's request for amortization in rates of the impacts of poor hydro conditions. Although the Order acknowledges that the Company incurred excess net power costs due to low water conditions, the absence of an acceptable inter-jurisdictional cost allocation methodology precludes the impact from being calculated and recovered in rates.

The absence of an inter-jurisdictional cost allocation methodology deemed acceptable to the Commission was thus used as the basis for denying any relief whatsoever, an outcome that is fundamentally unfair on its face. The unfairness is compounded given that this underlying premise itself is based upon errors of law and fact.

2 Pursuant to WAC 480-07-850, PacifiCorp seeks reconsideration of the Order. PacifiCorp respectfully contends that reconsideration is warranted given the unjust outcome produced by the Order, taking into account the following:

---

[2] Order at ¶¶ 98-99. The Order also denies the request for implementation of a decoupling mechanism, once again citing the absence of an acceptable inter-jurisdictional cost allocation methodology. *Id.* at ¶ 108. While PacifiCorp believes this denial is unfortunate because of the potential of decoupling to promote optimum conservation investment, the decoupling proposal provided no economic benefit to PacifiCorp, and therefore PacifiCorp does not assert that denial of decoupling impairs its right to just and reasonable rates.

- The Order's application of the "used and useful" standard in RCW 80.04.250 reflects an unprecedented interpretation of that ratemaking principle, one that conflicts with the plain language of the statute, Washington Supreme Court precedent, and the Commission's application of that standard in previous decisions. Moreover, the Order improperly intertwines its application of its newly articulated "used and useful" standard with an unrelated issue regarding the implications of a claimed 16-year-old merger commitment made to regulators in another state, but not requested by or made to Washington regulators.
- The result in the Order is so unfair as to draw into question whether it meets constitutional requirements. According to case law under the Fifth Amendment to the U.S. Constitution, it is improper to use a rigid application of the "used and useful" principle in a manner that precludes examination of the overall "end result" produced by the Order.
- Had the Order reached an analysis of its overall impact on the financial health of the Company – a constitutionally required analysis – the denial of rate relief in the face of overwhelming evidence of an under-earnings situation would fail to satisfy the "end result" test set forth in *Hope Natural Gas*.[3] The overwhelming weight of evidence shows that the Order fails to satisfy this constitutional requirement.
- The Order radically departs from the Commission's prior practice of affording necessary rate relief, with or without agreement on an acceptable inter-jurisdictional cost allocation methodology. In the sense employed in the Order, the Company has not had an inter-jurisdictional cost allocation methodology "approved" by the Commission since 1986, yet has received rate relief in 2000,

---

[3] *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 64 S. Ct. 281, 88 L. Ed. 333 (1944).

2001, 2003, and 2004. Never before has the absence of an approved cost allocation methodology been applied so punitively as to completely deny a request for rate relief.

- The Order misstates evidence, while failing to consider the other very substantial evidence offered by the Company to demonstrate the "tangible and quantifiable benefits" provided to Washington customers from the Company's integrated system, including Eastside resources.

3 By this Petition, the Company requests that the Commission grant reconsideration to correct these errors of law and fact. Upon conducting the required analysis of the overall impact of the rate decision, the record supports a revenue requirement increase of not less than $11.0 million. The Commission in the Company's previous rate proceedings has adopted such a reasonable "end result" in the absence of an agreed-upon inter-jurisdictional allocation methodology, and the Company asks for a consistent ruling in this proceeding. Simultaneous with this request for reconsideration, the Company is filing a separate, limited rate request seeking rate relief of approximately $7.0 million, or 2.99 percent. The Company proposes that this limited increase go into effect with 30 days' notice while Commission reconsideration or any subsequent appeal considers the evidence in support of at least $4 million of additional rate relief above this level.

ARGUMENT

A. The Order's Application of the "Used and Useful" Standard of RCW 80.04.250 to Exclude the Company's Resources Is Erroneous.

1. The Company's Resources Meet the "Used and Useful" Standard of RCW 80.04.250, as That Standard Has Been Applied by the Washington Supreme Court and Previous Commission Decisions.

4 The Order finds that "the Company has failed to carry the burden it alone bears to prove that resources in its Eastern service territories, remote from Washington, *provide tangible and quantifiable benefits to customers 'in this state' as required by RCW 80.04.250.*" Order at ¶ 62

(emphasis added). The statute relied upon throughout the discussion in this portion of the Order, RCW 80.04.250, provides as follows:

> The Commission shall have power upon complaint or upon its own motion to ascertain and determine the fair value for rate making purposes of the property of any public service company *used and useful for service in this state* . . . .

(emphasis added.) According to RCW 80.04.010, the term "service" when used in Title 80 is used "in it broadest and most inclusive sense."

5 Against this statutory backdrop, the Order creates a different and greater requirement that "used and useful" means the property must "provide tangible and quantifiable benefits to customers 'in this state'" (Order at ¶ 62), with the further new proviso that such "quantifiable direct or indirect benefits of each resource to Washington" must be "commensurate with its cost." Order at ¶ 68. The interposition of such a requirement not only is unprecedented, but also is contrary to the plain language of the statute; rather than define "service" in its "broadest and most inclusive sense," a plant is deemed to provide "service" only upon the requisite showing of "tangible and quantifiable benefits to customers." The interposition of such a requirement is also contrary to Washington Supreme Court precedent and previous Commission decisions.

6 In *State ex. rel. Pac. Tel. & Tel. Co. v. Department of Pub. Serv.*, 19 Wn.2d 200 (1943)(*"Pacific Telephone"*), the Washington Supreme Court rejected a restrictive application of the "used and useful" standard that the Commission's predecessor, the Department of Public Service, had adopted in a telephone rate proceeding. In *Pacific Telephone*, the Department excluded from the utility's rate base three parcels of real estate and a considerable amount of underground conduit that were not then used but which were acquired "with every reasonable expectation" they would in the future be used in the course of the utility's business. The Department found that the items at issue did not meet the "used and useful for service" standard in the predecessor statute to RCW 80.04.250, and excluded them from the utility's rate base on that ground. The Supreme Court rejected the Department's narrow application of the "used and useful" standard. *19 Wn.2d at 229.* More relevant to the Order in this docket, the Court also

rejected the alternative rationale offered by the Department for excluding the underground conduit – that it "will be used to a considerable extent for the carriage of *interstate* service" and thus not properly chargeable to Pacific Telephone's Washington customers for *intrastate* service. According to the Court, this is not grounds for exclusion from rate base, but a matter to be addressed through allocating only a *portion* of the costs to Pacific Telephone's Washington customers:

> The department, after a separation study, may properly allocate a reasonable proportion of the cost of the conduits to *intrastate* service.

19 Wn.2d at 230. In other words, a plant *cannot be excluded from rate base* on the grounds that its use is not dedicated *exclusively* to Washington-specific service; the solution is to assign cost responsibility through an *allocations* process.

7 In *People's Organization for Washington Energy Resources v. Washington Utilities and Transportation Commission* ("*POWER v. WUTC I*"), 101 Wn.2d 425, 430 (1984), the Washington Supreme Court again addressed the meaning and application of the "used and useful" standard of RCW 80.04.250. The matter at issue was whether the Commission could include Construction Work in Progress ("CWIP") in a utility's rate base, notwithstanding that the underlying utility plant was uncompleted and incapable of providing service. In interpreting the "used and useful" standard of RCW 80.04.250, the Court stated:

> "Used" is defined as "employed in accomplishing something"; "useful" is defined as capable of being put to use: having utility: advantageous: producing or having the power to produce good: serviceable for a beneficial end or object". Webster's Third New International Dictionary 2524 (1976). Thus, RCW 80.04.250 empowers the Commission to determine, for ratemaking purposes, the fair value of property which is employed for service in Washington and capable of being put to use for service in Washington.

101 Wn.2d at 430. On the specific issue of inclusion of CWIP in rate base, the Court ruled that "an uncompleted facility provides no service whatsoever," and thus was not properly includable in a utility's rate base. *Id.* at 432. It should be noted that RCW 80.04.250 was subsequently

amended to expressly grant the Commission the discretion to include CWIP in rate base upon a finding that such "inclusion is in the public interest." That the legislature determined that an investment providing "no service whatsoever" could, in appropriate circumstances, be included as "used and useful" under RCW 80.04.250 suggests that the narrow, restrictive interpretation advanced in the Order is inapposite.

8 *POWER v. WUTC I* was decided on April 5, 1984. Shortly thereafter, in Cause No. U-83-57, the Commission considered the inclusion in rate base of the Company's generating unit which was located in a remote location – Montana – and in the absence of a showing that the plant output could actually be delivered to Washington. Significantly, the Commission found that the generating plant in question – Colstrip 3 – was "currently providing electricity ***to the company's system***." Cause No. U-83-57, Second Supplemental Order at 11 (June 12, 1984)(emphasis added). As a result, the generating plant was found to be "used and useful" under RCW 80.04.250:

> The Commission is aware that the plant is currently producing power, and, in fact, power from the plant was used to meet the company's power needs in December 1983 . . . . The Commission has considered the power reserves of the company and is convinced that the Colstrip 3 plant is used and useful to the ratepayers of the state of Washington[.]
>
> . . .

Cause No. U-83-57, Second Supplemental Order at 8. After reviewing the Washington Supreme Court's freshly published analysis of "used and useful" in *POWER v. WUTC I*, the Commission reached the following conclusion:

> Colstrip 3 is used. It now produces power and has been used to meet the company's power needs. Colstrip 3 is useful. It provides a source of reserves and is a relatively low-cost resource.

Id. at 9. In this decision reached just two months after the Washington Supreme Court's ruling in *POWER v. WUTC I* – which focused exclusively on the meaning and application of the "used and useful" standard – the Commission enunciated a standard that implemented the clear and unambiguous meaning of the statute. No requirement of "tangible and quantifiable benefits to

Washington customers" was interposed. There was no required demonstration of "quantifiable direct or indirect benefits to Washington," notwithstanding the Colstrip plant's remote location in Montana.[4] It was sufficient that the "***power from the plant was used to meet the company's power needs***." *Id.* at 8 (emphasis added).

9 This is consistent with the Commission's long-standing treatment of inter-jurisdictional cost allocation methodology issues with respect to the Company. Both before and after the merger with Utah Power & Light, PacifiCorp operated two control areas. The remoteness of a plant's location was never previously used as a basis for rejecting any of the Company's resources costs, and certainly was never used as a basis for denying rate relief in its entirety. In Cause No. U-86-02, for example, the last litigated general rate proceeding which featured an "approved" inter-jurisdictional cost allocation methodology for the Company, a fully "rolled-in" approach was used to allocate the costs of the Company's generating facilities – including those in the Eastern Control Area – across the six states in which the Company then operated (Montana, Wyoming, Idaho, California and Oregon, in addition to Washington).[5] Cause No. U-86-02, Second Supplemental Order at 33-34 (Sep. 19, 1986).

10 More recently, the Commission approved the inclusion of Coyote Springs II into the rate base of Avista Utilities ("Avista"), even though that generating unit is located outside of Washington.[6] The order in that proceeding makes no mention of this particular out-of-state generating unit having to meet a requirement of "tangible and quantifiable benefits to Washington customers" and, in fact, the plant was includable even though it admittedly was not

---

[4] The Company does not have sufficient transmission rights to move all of the power from its share of Colstrip units 3 and 4 to its Washington loads. Exh. No. 331-T at 34:11-13 (Duvall).

[5] The Order attempts to distinguish this precedent on the grounds that, unlike the "joint facilities" at issue in Cause No. U-86-02, the Company's current resources have not been demonstrated to be "joint." This is a distinction without a difference. The Company's current resources are "joint" to the same extent that Dave Johnston and Wyodak – located in the eastern control area, yet included in Washington rates – were "joint facilities" in 1986.

[6] Docket No. UE-050482, Order No. 05 (December 21, 2005) at ¶¶ 108-114 (Hermiston is located in Oregon).

used in the test period and was "only necessary for future periods."[7] Moreover, the record in this case suggests that there are firm transfer limitations that affect Avista's ability to get the plant output to its service territory in Washington.[8] It appears very much in doubt that Coyote Springs II could meet the stringent requirement for inclusion in Avista's rate base that the Order imposes upon PacifiCorp in this proceeding.

11 Other regulatory commissions have not imposed a rigid application of the "used and useful" standard on multi-state utilities to exclude out-of-state resources from rates. The Illinois Commerce Commission, for example, stated the following with respect to Union Electric, which operated in both Illinois and Missouri:

> [T]he facilities of the Company are integrated in substantial part, into a single system to provide service to the St. Louis Metropolitan and surrounding area located in both Illinois and Missouri. It is difficult, if not impossible as a practical matter, to accurately determine the property within such an integrated system which is "used and useful" to serve customers in Illinois. Therefore, the property "used and useful" in Illinois has admittedly been determined by allocation rather than by actual dedication to service of Illinois rate payers.

Union Elec. Co., No. 58738, 1973 Ill. PUC LEXIS 4 (Ill. Commerce Comm'n, Oct. 23, 1973). Similarly, the Michigan Public Service Commission stated as follows with respect to Wisconsin Electric Power Company's out-of-state plants:

> The physical location of Wisconsin Electric's generation plant and other facilities relative to the Michigan-Wisconsin boundary is not usually significant for ratemaking purposes; the cost of service study covering the entire multi-state utility, not plant location, determines jurisdictional cost allocations.

Wisc. Elec. Power Co., Case No. U-12725, 221 P.U.R. 4th 136 (Mich. Pub. Serv. Comm'n, Sep. 16, 2002).

---

[7] *Id.* at ¶ 113.

[8] TR. 687: 17-24 (Duvall).

2. Any Commitment the Company May Have Made in Connection with Oregon Approval of the PacifiCorp/Utah Power Merger Is Irrelevant to Whether the Company Has Met Its Burden Under RCW 80.04.250.

12 As additional support for the rejection of the Revised Protocol cost allocation methodology – and the corresponding rejection of virtually all relief requested by the Company in this proceeding – the Order cites a ruling from the *Oregon* Public Utility Commission ("OPUC") to suggest that the risk of such an outcome was anticipated by the Company, and in fact, the Company "accepted the risk that divergent allocation decisions among the states might result in an under-recovery." Order at ¶ 56. This line of reasoning is fundamentally unfair in several respects.

13 First, the referenced commitment was made sixteen years ago in connection with *Oregon* approval of the PacifiCorp/Utah Power merger. Notably, the Order fails to cite any commitment made by the Company in Washington or any condition on this point imposed by the Commission in connection with approval of that merger in Washington. Rather, the Order suggests that the Oregon order should simply be "read together" with the Commission order approving the merger.[9]

14 Second, any risk that "the Company accepted that it alone would bear" as a result of the statement in the Oregon proceeding relates to "less than full system cost recovery if interdivisional allocation methods differ among the merged company's jurisdictions." *Id.* (quoting Oregon Docket UF 4000 (Order 88-767 at 6 (July 15, 1988)). This language cannot be cited – as the Order does[10] – to suggest that the Company agreed to accept the risk that ***no allocation method would be adopted at all*** by a jurisdiction – the outcome with respect to Washington under the Order – or that such refusal would be punitively applied to ***deny any rate***

---

[9] Order at ¶ 56. If Oregon orders can be so easily "read together" with Washington orders, the Company respectfully cites OPUC Order No. 05-21 in Docket UM 1050, in which the OPUC adopted the Revised Protocol and, similarly, cites Idaho PUC Order No. 29708 in Case No. PAC-E-02-03, Wyoming PSC Order in Docket No. 20000-EI-02-183, and Utah PSC Order in Docket No. 02-035-04, in which the Revised Protocol was adopted in those states.

[10] Order at ¶ 325, Finding of Fact No. 11, which states that "[w]hen it chose to merge with Utah Power 20 years ago, PacifiCorp assumed the risk that divergent allocation decisions among the states in its service territory might result in under-recovery of costs."

relief whatsoever – which the Order does with respect to Washington – rather than simply cause a shortfall in "full system recovery."

15 Finally, the primary basis for denying rate relief cited in the Order – the failure of the Company "to carry the burden that it alone bears to prove that resources in its Eastern service territories, remote from Washington, provide tangible and quantifiable benefits to customers 'in this state' as required by RCW 80.04.250" – has nothing whatsoever to do with any commitment the Company may have made sixteen years ago in Oregon in connection with approval of the Utah Power merger. The issue is the legality of the standard enunciated by the Order in the application of RCW 80.04.250, the sufficiency of the evidence weighed against that standard, and whether the Order satisfies constitutional requirements. The reference to the OPUC order – and the reliance placed on it in reading it "together" with the Commission's order on that particular matter – is further evidence of the fragile basis upon which the Order's findings are reached, and is further evidence of the unfairness that should be addressed upon reconsideration.

B. It Was Error for the Order to Apply the "Used and Useful" Standard as an Absolute Bar to Rate Relief and Thereby Preclude the Constitutionally Required Analysis of the Overall Result Produced by the Order.

16 Under the punitive application of the "used and useful" standard advanced in the Order, the Commission is relieved of its obligation *to even consider* whether the rates under which the Company operates in Washington are confiscatory. As stated in the Order:

> Because we find the Company has not met its burden to show that the resources included in the Revised Protocol are used and useful for service in this state, we find the Company has not met its burden to show that the rates proposed in this proceeding would be fair, just and reasonable.

Order at ¶ 63. Given the newly articulated requirement under RCW 80.04.250 that "tangible and quantifiable benefits" must be shown to meet the "used and useful" standard, and the Order's finding that the Company failed to meet the burden under this newly articulated requirement, the Order never reaches the analysis required under the *Hope* "end result" test to evaluate the overall

impact of the Order on the Company's financial health or its ability to access capital on reasonable terms. This constitutes reversible error of law.

17 Interjection of the "used and useful" standard as an absolute bar to consideration of the overall justness and reasonableness of rates represents a formulaic, inflexible approach to ratemaking that was largely rejected by the U.S. Supreme Court's adoption of the "end result" test in *Hope*, a development that the Washington Supreme Court endorsed for purposes of setting rates in this state. *People's Org. for Wash. Energy Res. v. Wash. Util. and Transp. Comm'n ("POWER v. WUTC II")*, 104 Wn.2d 798, 811 (1985). The "used and useful" test is described by one commentator as having risen from the "primordial ooze" of public regulation.[11] As observed by the Michigan Public Service Commission when the "used and useful" standard was urged as the basis for excluding a peaker from rate base:

> Unfortunately, there is no statutory or common law standard in Michigan for when a plant is considered "used and useful." The Commission believes that catchwords and catchy phrases can be misleading if common sense is not used when applying them to the facts of a case like this. The rationale behind the "used and useful" standard is to avoid allowing a utility to earn a return on property which is not being utilized toward the ultimate goal of providing service to utility customers.

Ind. & Mich. Elec. Co., Case No. U-6148, 1981 Mich. PSC LEXIS 1027 (Mich. Pub. Serv. Comm'n, May 12, 1981). The use of "common sense," as suggested by the Michigan commission, is essentially the application of the "end result" test under *Hope*. In other words, rather than relying on a formulaic approach that attaches great significance to whether an individual asset may be "used" or "useful," it is the overall "end result" of the process that is relevant, *i.e.*, "[i]t is not the theory but the impact of the rate order which counts." *Hope*, 320 U.S. at 602. This was the significance of the *Hope* decision: the rejection of a blind and rigid application of a traditional ratemaking concept – such as "used and useful" – in favor of an approach that considers the overall impact of the rates, "***no matter how they are determined***."

---

[11] James J. Hoecker, *Used and Useful: Autopsy of a Ratemaking Policy*, 8 Energy L.J. 303 (1987).

POWER v. WUTC II, 104 Wn.2d at 811. The Order radically reverses this evolution of the ratemaking process, by resorting to a strict application of the "used and useful" standard ***to avoid even examining*** whether the overall impact of the rate order is reasonable. The failure to do so is unlawful.

18 A leading case illustrating this point is *Jersey Central Power & Light Co. v. FERC*, 810 F.2d 1168 (D.C. Cir. 1987). In *Jersey Central*, the D.C. Circuit Court held that the Federal Energy Regulatory Commission ("FERC") had elevated the application of the "used and useful" principle "to the status of an impregnable barrier" by denying rate relief to the utility on the grounds that the utility had improperly included investment in an abandoned nuclear plant in its rate base. *Id.* at 1187. The FERC had summarily excluded the unamortized portion of the investment from rate base as "consistent with Commission precedent," and failed to perform any analysis as to the impact of such exclusion on the overall justness and reasonableness of the rates produced thereby. *Id.* at 1172. The FERC had argued that because excluding the unamortized portion of a cancelled plant investment from rate base had previously been found permissible as a ratemaking practice, "any rate order that rests on such a decision is unimpeachable." *Id.* at 1179. The Court of Appeals rejected this contention:

> [T]hat would turn our focus from the end result to the methodology, and evade the question whether the component decisions together produce just and reasonable consequences. . . . The fact that a particular ratemaking standard is generally permissible doe not *per se* legitimate the end result of the rate orders it produces.

Id. at 1179-80. With respect to the balancing of interests required by the constitution, the court stated:

> When the Commission conducts the requisite balancing of consumer and investor interests, based upon factual findings, that balancing will be judicially reviewable and will be affirmed if supported by substantial evidence. That is the point at which deference to agency expertise will be appropriate and necessary. But where, as here, the Commission has reached its determination by flatly refusing to consider a factor to which it is undeniably required to give some weight, its decision cannot stand. [Citation omitted.] The case should therefore be remanded to the

> Commission for a hearing at which the Commission can determine whether the rate order it issued constituted a reasonable balancing of the interests the Supreme Court has designated as relevant to the setting of a just and reasonable rate.

Id. at 1181-82. The court made it clear that the FERC "is not precluded from employing 'used and useful,' or any other specific rate-setting formula." But "[i]t ***must ensure, however, that the resulting rate is just and reasonable.***" *Id.* at 1187.

19 This is the required analysis that is missing in the Order. The Order applies the newly enunciated "used and useful" standard as an "impregnable barrier" to the Company obtaining any rate relief, and does so without any analysis whatsoever of the overall reasonableness of results produced by the decision. The Order could not withstand judicial review, as it fails to perform the analysis required by the United States Constitution, as enunciated in *Hope* and as adopted in Washington in *POWER v. WUTC II.* As discussed in the next section, had the Order proceeded to undertake the required analysis, it would have been clear that the Order fails to satisfy constitutional requirements.

C. The "End Result" Produced by the Order Is Unreasonable and Fails to Satisfy Constitutional Requirements, as Enunciated in *Hope* and Adopted by the Washington Courts.

20 The "end result" test is a standard applied by reviewing courts in determining whether rates are set at a level that withstands constitutional scrutiny. *See, e.g., Duquesne Light Co.*, 488 U.S. 299, 310, 109 S. Ct. 609, 102 L. Ed. 2d 646, (attributing doctrine to Takings Clause of Fifth Amendment, which prohibits confiscatory rates); *Permian Basin Area Rate Cases*, 390 U.S. 747, 770, 88 S. Ct. 1344, 20 L. Ed. 312 (1968) ("the just and reasonable standard . . . 'coincides' with the applicable constitutional standards"). The U.S. Supreme Court first announced the "end result" test in *Hope*. The issue in *Hope* was whether the Federal Power Commission had erred in valuing a utility's property by its actual value rather than its fair value. The Court resolved the issue by stating that a commission may choose whichever methodology it thinks appropriate so long as, in the end, the rates set are just and reasonable. As stated in *Hope*:

> [T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of "pragmatic adjustments." . . . *It is not the theory but the impact of the rate order which counts.* If the total effect of the rate order cannot be said to be unreasonable, judicial inquiry . . . is at an end. The fact that the method employed to reach that result may contain infirmities is not then important.

320 U.S. at 602 (1944) (emphasis added, citations omitted). The Washington Supreme Court reaffirmed the well-established "end result" test in *POWER v. WUTC II*, 104 Wn.2d at 811. ("[I]t is also helpful to consider rates in the broader perspective of the functional 'end result' test announced by the United States Supreme Court in [*Hope*]; that is, that rates, ***no matter how they are determined***, need only 'enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed.'" (Emphasis added)).

21 Under any reasonable application of the "end result" test, the Order fails to satisfy constitutional requirements. As a starting point in this analysis, the Company's initial filing shows that based on the results of operations for the test period, the Company was earning a return on equity ("ROE") in Washington of just 3.490 percent.[12] (This is calculated on the basis of the Revised Protocol; the Modified Accord methodology, previously used in Washington, suggests an even lower test year ROE of 2.804 percent.[13]) The record demonstrates that after taking into account the decisions reached in the Order on numerous issues and findings made in the Order on other issues, the Company is entitled to rate relief in some magnitude.

22 Each party opposed to PacifiCorp's requested rate increase stated the cumulative effect if all of its proposed revenue requirement adjustments were adopted. The Commission decided certain of the contested issues and elected not to decide others. Table 1 shows the revenue requirement produced for each party if all of its adjustments were adopted, including its allocation adjustments.

---

[12] Exh. No. 191-T at 2:5-8 (Wrigley), Exh. No. 193 at page 1.0, line 60 (Wrigley).

[13] Exh. No. 193 at page 9.0, line 60 (Wrigley).

TABLE 1

		(millions)	
Company Rate Request (Final)	**$29.8**	**$29.8**	**$29.8**
Reductions proposed by parties	**Staff**	**ICNU**	**Public Counsel**
ROE	(7.6)	(6.5)	(5.0)
Capital structure	(6.5)	(0.8)	(7.7)
Allocation	(13.5)	(14.3)	(5.5)
Consolidated tax adjustment		(13.4)	
Double leverage	(6.4)		(6.4)
Production factor adjustment		(10.3)	
Estimated other O&M/Rate Base adjustment[14]	(6.2)	(6.7)	(0.7)
Net Impact	**(10.4)**	**(22.2)**	**4.5**

23 Table 2 shows how the revenue requirement recommendations for all parties are impacted by the Commission's Order on items for which the Commission made a decision not related to allocations. The starting point in Table 2 is the Company's rate request prior to hearing ($29.8 million), followed by adjustments for the accepted and the rejected items as stated in the Order. As shown in Table 2, if the Commission accepted the allocation method proposed by each party (reflected in the line titled "Allocation Methodology"), the adjusted amounts for PacifiCorp, Staff, and Public Counsel are all positive. This supports the Company's position that some level of rate increase is warranted based on the evidence presented.

[14] Other items include the net effect of parties' adjustments related to wages & benefits, cash working capital, income tax, property tax, WAPA contract, RTO, and other O&M and rate base items.

TABLE 2

Company Rate Request Prior to Hearing	**$29.8**	**$29.8**	**$29.8**	**$29.8**
Impact of Issues Resolved in Order	**Company**	**Staff**	**ICNU**	**Public Counsel**
ROE, Capital Structure	(7.2)	(7.2)	(7.2)	(7.2)
Capital Stock Expense	(0.2)	(0.2)	(0.2)	(0.2)
Malin Midpoint	(0.8)	(0.8)	(0.8)	(0.8)
RTO		0.1	0.2	
WAPA			0.2	
FITC Dividend				0.4
Pension			0.7	
Production Factor Adjustment			(10.3)	
Deferred Debits	(0.4)	(0.4)	(0.4)	(0.4)
Reverse MEHC Commitments	1.2	0.1	1.1	
Consolidated Tax Adjustments				
Double leverage				
Estimated other O&M, Rate Base Adj.[15]		(5.4)	(6.0)	(0.8)
Allocation Methodology		(13.5)	(14.3)	(5.5)
Net Impact	**22.1**	**2.5**	**(7.2)**	**15.3**
Undecided Items[16]				
Rejection of Net Power Cost Stipulation	2.9	2.5	2.9	
Incentive/Bonus		1.2	2.2	1.0
Net Impact with Additional Items	**25.0**	**6.2**	**(2.1)**	**16.3**
Production Factor Adjustment			10.3	
			8.2	

24 The line titled "Net Impact" shows what each party's case would be if the results of the twelve adjustments that were affirmatively decided in the Order were incorporated into the analysis. This analysis assumes that each party won on its allocation methodology – Staff's allocation adjustments reduce the Company's case by $13.5 million, ICNU's by $14.3 million, and Public Counsel's by $5.5 million – as reflected in the "Allocation Methodology" line. The average of this conservative range of results is an $8.25 million rate increase.

---

[15] Other items include the net effect of parties' adjustments related to cash working capital, hydro deferral, and other O&M and rate base items.

[16] The Order does not explicitly rule on these items; however, from the discussion in the Order and the parties' positions, it appears these issues would have been resolved favorably for the Company.

25 The line titled "Net Impact with Additional Items" adjusts each party's case for certain items in the Order that were not explicitly decided. However, the Order's discussion of the topic suggested that the Commission would have ruled favorably for the Company if it had adopted an allocation methodology. The average of this range of results is an $11.425 million rate increase.[17] This average provides reasonable support for the $11 million in requested rate relief in this Petition for Reconsideration.

26 As another point of reference, if only the items related to distribution costs for the Washington jurisdiction are taken into consideration – thereby disregarding impacts associated with inter-jurisdictional cost allocations, because distribution costs are treated as *situs* costs – the increase in revenue requirement over the Company's last rate case would be approximately $5.9 million as summarized in Table 3.[18]

TABLE 3
Washington Distribution Revenue Requirement

	UE-032065 March 2003	UE-050684 Sep 2004	Change
Net Operating Revenue (Distribution)	$17,953,322	$24,286,643	$6,333,322
Net Rate Base (Distribution)	209,091,344	214,295,577	5,204,233
Weighted Cost of Capital[19]	11.881%	11.387%	
Revenue Requirement (for Distribution)	**$42,794,565**	**$48,689,281**	**$5,894,715**

[17] Rejecting ICNU's production factor adjustment of $10.3 million – a rejection that appears warranted under the Order – would produce a positive $8.2 million figure for ICNU, raising the average to $14.0 million.

[18] Net Rate Base (Distribution) in Table 3 is the distribution plant in Washington plus the general and intangible plant attributable to Washington, calculated from figures in Exh. No. 227 (Wrigley supplemental testimony) in UE-050684, and Exh. No.___(JTW-3) in UE-032065. Net Operating Revenue (Distribution) is derived in the same fashion, from the same sources. Revenue Requirement (for Distribution) equals the first line plus the product of the second and third lines.

[19] The Weighted Cost of Capital for Docket No. UE-032065 is based on the overall stipulated rate of 8.39 percent, "bumped up" to account for taxes. The Weighted Cost of Capital for Docket No. UE-050684 is the Commission-ordered 8.106 percent rate, "bumped up" for taxes.

27 Given the acknowledgment in the Order that there is no disagreement on the functional categorization of costs (Order at ¶ 30) and the allocation of distribution costs solely to individual states based on the location of distribution facilities, *Id.* at ¶ 32, there would not seem to be any basis for disputing the demonstrated need for rate relief under this analysis.

28 Taking the above analyses into account, it does not appear that the Order could withstand judicial scrutiny under an "end result" approach. Based on the resolution of the issues reached in the Order, ***there is virtually no scenario under which the record would support a "zero" rate increase.*** A reasonable analysis of the parties' positions, taking into account the issues resolved in the Order and the findings reached in the Order on other issues, suggests a revenue requirement increase of over $11 million. In the face of this evidence, the complete denial of any rate relief on the basis of the inter-jurisdictional cost allocation issue is unfair and unreasonable on its face. It does not produce an "end result" that will "enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed," which are the constitutional requirements under *Hope* and as found applicable in Washington.[20]

D. The Order Radically Departs from the Commission's Prior Practice of Affording Necessary Rate Relief, With or Without Agreement on an Acceptable Inter-Jurisdictional Cost Allocation Methodology.

29 Consistent with the statutory and constitutional requirements of setting "just and reasonable" rates in Washington, the Commission has previously granted PacifiCorp necessary rate relief, even in the absence of agreement on an inter-jurisdictional cost allocation methodology, and in the face of suggestions that the Company's Eastside resources may not be "used and useful" for purposes of setting rates in Washington. As noted above, the Company's last litigated general rate case in Washington in which an "approved" inter-jurisdictional cost allocation methodology was in place was Cause No. U-86-02, decided in September 1986.

---

[20] *POWER v. WUTC II*, 104 Wn.2d at 811.

30 In its order approving PacifiCorp's merger with Utah Power & Light Company, the Commission indicated that it was "concerned about the effects on Pacific's ratepayers of merging with a higher cost system," and stated that "any integration of the power supply function of the two companies should be done in a manner consistent with Pacific's least-cost planning process," a condition that was fulfilled. Docket No. U-87-1388-AT, Second Supplemental Order at 14 (July 15, 1988). In that proceeding, Washington customers received their allocated share of $59 million in merger benefits.

31 Thereafter, following ScottishPower's acquisition of PacifiCorp, the Company received rate relief in 2001 in Docket No. UE-991832. Although the Company's filing was based upon the Modified Accord, the parties did not agree upon that cost allocation methodology. Rates were approved pursuant to a Stipulation among the parties which provided, among other things, that the Company would be required to demonstrate the prudence of its resource acquisitions since the 1986 case. Docket No. UE-991832, Third Supplemental Order at ¶ 44 (Aug. 9, 2000). The Commission explicitly deferred the question of whether all or part of the subject assets should be explicitly authorized for inclusion in PacifiCorp's rate base. Notwithstanding the deferral of this issue, the Commission approved rates which "includes an allowance for return on some yet to be determined part of this investment." *Id.* at ¶ 66.

32 Concurrent with the rate increase approved in Docket No. UE-991832, the Company returned to its Washington customers the rate credits flowing from the sale of the Centralia plant. Docket No. UE-991262. These credits were calculated in accordance with the Modified Accord, even though that methodology technically had not been approved for ratemaking purposes in Washington. The absence of an approved inter-jurisdictional cost allocation methodology did not hold up the passing through of rate reductions to customers. Docket No. 991262, Second Supplemental Order at 23 (Mar., 2000).

33 Most recently, in Docket No. UE-032065, the Commission approved a Stipulation among the Company, Staff, and Natural Resources Defense Council that authorized a rate increase of $15.5 million, or about 7.5 percent, on the basis of an interim solution for inter-jurisdictional cost

allocations – use of the "Protocol" allocation methodology for the purposes of determining rates – and in the absence of a specific finding as to the inclusion, for ratemaking purposes of certain of the Company's resources in its Eastern control area. Order No. 06 in that proceeding required the Company to include as part of the current docket a proposal for resolving inter-jurisdictional cost allocation in Washington. Order No. 06 at ¶ 95, item 3(c).

34 The Commission should continue to follow its previous precedent, which would provide some limited amount of rate relief in the absence of the resolution of inter-jurisdictional cost allocation issues. As discussed below, the Company is proposing an additional solution that would provide a measure of permanent rate relief concurrent with Commission reconsideration or any subsequent appeal. For the reasons stated in the preceding sections, the flat rejection of the Company's request for rate relief on the basis of the inter-jurisdictional cost allocation issue is unlawful. The provisional solution proposed by the Company comports with the reasonable and measured approach previously followed by the Commission, and provides a means to bring the outcome of this proceeding into line with statutory and constitutional requirements.

E. The Order Fails to Give Any Weight to the Evidence Offered by the Company to Demonstrate the "Tangible and Quantifiable Benefits" Provided to Washington Customers from the Company's Integrated System, Including Eastside Resources.

35 Even assuming that the standard enunciated in the Order for satisfying the "used and useful" requirement was lawful, the record contains evidence that provides the necessary demonstration to support inclusion of the Company's resources under this standard. The Order poses a requirement that the Company show "benefits to ratepayers in Washington, either directly (e.g., flow of power from a resource to customers) and/or indirectly (e.g., reduction of cost to Washington customers through exchange contracts or other tangible or intangible benefits)." Order at ¶ 50. The Order suggests that this can be shown "through historical system operation or modeling of the system showing that Eastside plant costs added to Washington rates would be offset by reductions to other cost categories (*e.g.*, power costs), such that overall costs to Washington ratepayers would be no more than without the Eastside resources." *Id.* at ¶ 69.

36 The Company respectfully submits that this is precisely the type of analysis that is included in the record of this proceeding to support the adoption of the Revised Protocol. For example, Mr. Duvall's direct testimony at pages 34-44 and accompanying exhibits[21] provide extensive discussion of the benefits provided to Washington customers from the Company's Eastside resources. The Order does not fairly characterize the evidentiary record when it states that the Company failed to provide "quantitative evidence of the benefits" and instead relied upon "unsubstantiated broad statements." *Id.* at ¶ 53. Nor is it fair or accurate to summarize the Company's position by reference to Mr. Duvall's testimony regarding the need to show a "State-specific benefit." *Id.* at ¶ 54. Quite apart from the Company's position on that particular issue, the testimony of Mr. Duvall and Mr. Taylor demonstrate the Washington-specific benefit of the resources.[22]

37 More specifically, the Order contains a number of inaccuracies in the discussion related to inter-jurisdictional cost allocation methodology, as follows:

- Footnote 10 on page 10 of the Order erroneously states that the former Pacific Power states and resources are all part of the Western control area. In fact, Wyoming loads and two large Pacific Power thermal resources (Dave Johnston and Wyodak) are located in the *Eastern* control area.[23]
- The Order refers to "a number of material conditions or modifications" that were imposed by the other states in adopting the Revised Protocol. Order at ¶ 26. In

---

[21] Exh. Nos. 331-T, 332-340 (Duvall).

[22] *See, e.g*, Exh. No. 331-T at 38:1-19 (Duvall) ("Washington load growth contributed heavily to the need to add these resources," citing data in Exh. No. 339); Exh. No. 371-T at 10:14-23 (Taylor)(explaining the benefit to Washington of a lower proportional share of system costs due to faster growth in other states).

[23] As discussed in Mr. Duvall's direct testimony, prior to the 1989 merger with Utah Power, the former Pacific Power operated an integrated system with two control areas. Many of the same transmission constraints for moving power between control areas that exist now existed then, yet the costs of the Dave Johnston and Wyodak generating stations were included in Washington rates even though these generating stations were in the eastern control area and Washington customer loads were in the Western control area. Dave Johnston and Wyodak together provide over 1000 MW of capacity to the system. Exh. No. 331-T at 34:18-26 (Duvall).

fact, none of the conditions imposed by the states relate to the essential features of the Revised Protocol, but rather are transitional matters that limit the rate impact.[24] To suggest that these "reservations" evince an absence of a "lasting consensus," (Order at ¶ 60) unfairly maligns the considerable efforts made by the *other* states to achieve a solution to this vexing issue of inter-jurisdictional cost allocations.

- The Order erroneously refers to the Hybrid as a "prior allocation method" similar to the Modified Accord. Order at ¶ 34. In fact, the Hybrid method has never been utilized by any commission as a basis of setting rates (even a stipulated rate increase).[25]
- The Order erroneously states that the Company did "not quantify other benefits of an integrated system." Order at ¶ 36. The record, however, indicates the following:
    - The South Idaho Exchange contract "moves 800,000 megawatt hours from the Eastern System to the Western System throughout the course of the year."[26]
    - The overall benefits of an integrated system were quantified in two ways. First, the benefits at the time of the 1989 merger were quantified and immediately placed into Washington rates in the form of a $59 million rate reduction.[27] These price reductions were based on cost reductions that were forecasted to occur by integrating the operation of the Company over three control areas. *Id.* Second, Mr. MacRitchie testified regarding a

---

[24] Paragraph 26 of the Order is purportedly supported by the exhibits cited in footnote 14. The first two citations there are to the testimony of Mr. Furman and Mr. Taylor, who both simply state that the Revised Protocol has been adopted in Idaho, Oregon, Utah, and Wyoming. Exh. No. 1-T at 27:9-13 (Furman); Exh. No. 361-T at 3:11-14 (Taylor). The final citation in footnote 14 is to Staff witness Alan P. Buckley, who notes the transitional conditions imposed by the states which have adopted the Revised Protocol, but makes no statement regarding the long term materiality of those conditions. Exh. No. 541-TC at 41:10-43:10 (Buckley). Given that the Revised Protocol would result in a *downward* adjustment to Washington's revenue requirement, no such conditions would be necessary in Washington.

[25] Exh. No. 331-T at 13:13-14 (Duvall)(noting that "[e]ven proponents of the Hybrid Proposal could not agree on an appropriate initial Resource assignment.").

[26] TR. 664:15-19 (Duvall).

[27] Exh. No. 331-T at 35:18-23 (Duvall).

> study undertaken through the MSP process, which showed that the integration of the system actually provided approximately $300 million worth of value and, out of that value, Washington customers achieved or received about 14 percent of the benefits, even though they were eight percent of the system.[28]

- The Order erroneously states that "Oregon reserved the right to adopt the Hybrid Model if the results of the Hybrid Model proved more favorable to Oregon ratepayers." Order at ¶ 60. There is no such statement in the Oregon order. While that order discusses using the Hybrid as a comparator and to include it as one of the structural protection options, the conclusion of the order states:

> [T]he Commission concludes that the Stipulation and Revised Protocol are an appropriate resolution of all of the issues. We adopt the Stipulation in its entirety and ratify the Revised Protocol.[29]

This is not "an accommodation to resolve the pending case."

- The Order states that the Company is expected "to include the full value of hydro-electric resources in the Western control area in any inter-jurisdictional cost allocation model it develops for Washington." Order at ¶ 70. This statement suggests a misunderstanding of the resources located in the control areas. The vast majority of Wyoming's customers have been supporting the costs of the hydro for as long as the Washington customers, and it would be inequitable not to recognize their right to the benefits of these resources.

38 For the reasons stated in Section A above, it is the Company's position that the "tangible and quantifiable benefits" standard for "used and useful" enunciated in the Order is improper and unsupported. In any event, however, there is sufficient record evidence to support the inclusion of the Company's Eastside resources under this standard, and to provide a basis for determining a revenue requirement in order to grant necessary rate relief.

---

[28] TR. 343:12-24; 429:18-430:15 (MacRitchie).

[29] Exh. No. 375 (OPUC Order No. 05-21 in Docket UM 1050).

REQUEST FOR RELIEF

39 On the basis of the analysis of the Order's findings and the parties' position on the issues, as set forth in Section C above, the Company respectfully requests the Commission to grant reconsideration to conduct the required analysis of the overall reasonableness of the rates in light of the record evidence. Doing so suggests that some rate relief, in an amount no less than $11 million, is warranted. Such a remedy would permit the Commission and the parties to have the full benefit of the findings the Commission reached on significant issues in the case by translating those findings into a revenue requirement determination. This rate change would be implemented utilizing the rate spread and rate design proposals accepted by the Company, Staff, ICNU, and Public Counsel in this docket.

40 In addition, some limited relief should be granted through an abbreviated rate filing permitted by the Commission's procedural rules. WAC 480-07-505(1) permits a general tariff increase of less than 3.0 percent without following the full requirements associated with a general rate case filing. To provide an additional means of limited rate relief, the Company is filing contemporaneously with this Petition a request for a 2.99 percent increase in its Washington rates, to be implemented by applying a 2.99 percent surcharge to all customer bills. This would produce a revenue increase of about $7.0 million. The proposed effective date of this rate increase is May 27, 2006, thirty days after filing. To enable the evidentiary record in this docket to be used as cost support for this requested rate increase, the Company is also filing a Motion to Consolidate that rate filing with this proceeding (Docket No. UE-050684). Assuming this limited rate relief is granted without suspension of the filing, the Company would be afforded some rate relief in the intervening period while Commission reconsideration or any subsequent appeal considers the evidence in support of at least $4 million of rate relief in addition to the $7 million sought under WAC 480-07-505.

CONCLUSION

41 For the foregoing reasons, the Company requests that the Commission grant reconsideration of the Order and conduct the required analysis of the overall impact of the rate decision, which should produce a revenue requirement increase of not less than $11.0 million. In addition, while Commission reconsideration or any subsequent appeal considers the evidence in support of additional rate relief, the Company requests that the Commission consolidate this docket with the separate rate proceeding in which the Company is seeking a 2.99 percent rate increase, and to grant that requested rate relief without suspending the tariff sheets.

DATED: April 27, 2006.

STOEL RIVES LLP

Jason B. Keyes

James M. Van Nostrand
Marcus Wood
Jason B. Keyes

GEORGE M. GALLOWAY

Jason B. Keyes For

George M. Galloway

Of Attorneys for PacifiCorp

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing document upon the parties of record in this proceeding by first-class mail and electronic mail, addressed to said parties/attorneys' addresses as shown below:

Melinda J. Davison
Irion Sanger
Davison Van Cleve, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204

Email: mjd@dvclaw.com
ias@dvclaw.com

Randall J. Falkenberg
RFI Consulting, Inc.
8351 Roswell Road
PMB 362
Atlanta, GA 30350

Email: consultrfi@aol.com

Simon J. ffitch
Public Counsel Section
Office of Attorney General
900 Fourth Avenue, Suite 2000 (TB-14)
Seattle, WA 98164-1012

Email: simonf@atg.wa.gov

Donald T. Trotter
Office of the Attorney General
1400 S. Evergreen Park Drive SW
PO Box 40128
Olympia, WA 98504-0128

Email: dtrotter@wutc.wa.gov

Ralph Cavanagh
Natural Resources Defense Council
111 Sutter Street, 20th Floor
San Francisco, CA 94104

Email: rcavanagh@nrdc.org

Brad M. Purdy
Attorney at Law
2019 North 17th Street
Boise, ID 83702

Email: bmpurdy@hotmail.com

Robert D. Cedarbaum
Office of the Attorney General
Utilities and Transportation Division
1400 S Evergreen Park Drive SW
Olympia, WA 98504-0128

Email: bcedarba@wutc.wa.gov

DATED: April 27, 2006.

Jason B. Keyes