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 Docket No. UE-050412 *(consolidated)* ICNU ANSWER IN OPPOSITION TO PACIFICORP'S PETITION FOR RECONSIDERATION

ANSWER IN OPPOSITION TO PACIFICORP'S PETITION FOR RECONSIDERATION OF INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

June 16, 2006

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 1

III. ARGUMENT 2

A. Standard of Review 2

B. The Commission's Application of the Used and Useful Standard is Consistent with Washington Law and Commission Precedent 3

1. The Used and Useful Standard Requires the Commission to Remove All Costs from Rate Base that Are Not Used and Useful in Washington 4

2. The Commission Properly Rejected PacifiCorp's Entire Rate Increase Request Because the Company Failed to Prove that Its Rates Should Be Increased 9

3. PacifiCorp Should Not Be Permitted to Renege on Its Merger Commitments 12

4. The Final Order is Not Inconsistent with Past PacifiCorp Rate Cases 14

5. PacifiCorp Did Not Demonstrate that the Eastern Control Area Resources Benefit Washington 14

C. The Record Supports a Reduction in PacifiCorp's Rates 17

IV. CONCLUSION 21

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TABLE OF AUTHORITIES

Cases **Page**

MCI Telecoms. Corp. v. GTE Northwest, Inc., Docket No. UT-970653, Second Suppl. Order (Oct. 22, 1997) 20

People's Org. for Wash. Energy Res. v. WUTC, 101 Wn.2d 425 (1984) 4-7

People's Org. for Wash. Energy Res. v. WUTC, 104 Wn.2d 798 (1985) 18

Puget Sound Energy, Inc., 88 FERC (July 15, 1999) 7

State ex rel. Pac. Tel. & Tel. Co. v. Dept. of Pub. Serv. of Wash., 19 Wn.2d 200 (1943) 5, 6

State ex rel. PP&L v. Dep't of Pub. Works et al., 143 Wn. 67 (1927) 8

U.S. West Communications, Inc. v. WUTC, 134 Wn.2d 74 (1997) 11

WUTC v. PP&L, Docket No. U-83-57, Second Suppl. Order (June 12, 1984) 8

WUTC v. Puget Sound Energy, Inc., Docket No. UE-031725, Order No. 15 (June 7, 2004) 3

WUTC v. PacifiCorp, Docket No. UE-991832, Third Suppl. Order (Aug. 9, 2000) 1

WUTC v. PacifiCorp, Docket No. UE-032065, Order No. 07 (Nov. 10, 2004) 1

WUTC v. PacifiCorp, Docket No. UE-050684, Order No. 01 (May 24, 2005) 3

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I. INTRODUCTION

1 Pursuant to the May 12, 2006 notice of opportunity to answer petitions for reconsideration ("Petition"), the Industrial Customers of Northwest Utilities ("ICNU") submits this response respectfully requesting that the Washington Utilities and Transportation Commission ("Commission" or "WUTC") affirm its final order in these proceedings, Order No. 04 in UE-050684 and Order No. 03 in UE-050412 ("Final Order") and deny PacifiCorp's Petition.[1/] The Commission should reject PacifiCorp's Petition because the Commission's Final Order is well-reasoned, consistent with applicable Commission precedent, as well as state and federal law, and it contains no significant errors of fact or law.

II. BACKGROUND

2 On May 5, 2005, PacifiCorp filed this general rate case, requesting a $39.2 million rate increase, including a 20.3% increase for industrial customers.[2/] The Company's rate increase request followed a series of four rate increases in the past five calendar years.[3/] On April 17, 2006, after carefully considering PacifiCorp's request for additional revenues, the Commission issued its Final Order denying PacifiCorp's proposed rate increase. The Commission rejected PacifiCorp's rates because the

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1/ ICNU supports Staff's Petition for Reconsideration regarding the use of the deadband in the hydro deferral proceeding, Docket No. UE-050412.

2/ Exh. No. 253 (Est. Effect of Proposed Prices on Revenues from Electric Sales to Ultimate Consumers in WA, 12 Months ended September 2004).

3/ WUTC v. PacifiCorp, Docket No. UE-032065, Order No. 07 at ¶ 6 n.1 (Nov. 10, 2004) (7.5% rate increase); see WUTC v. PacifiCorp, Docket No. UE-991832, Third Suppl. Order at ¶ 33 (Aug. 9, 2000) (3% increase on January 1, 2001, 3% increase on January 1, 2002, and 1% increase on January 1, 2003).

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Commission found the Company's proposed "cost allocation methodology assigns resources to Washington which have not been proven to be 'used and useful for service in this state,' a statutory requirement."[4] The Commission also rejected PacifiCorp's proposed power cost adjustment mechanism, decoupling proposal and request to amortize deferred amounts, set PacifiCorp's cost of capital and return on equity, and addressed certain contested revenue requirement and rate base adjustments.[5] Finally, the Commission reviewed the end results of its Final Order and concluded that the Company's current rates are "fair, just, reasonable, and sufficient."[6]

3 In its April 27, 2006 Petition, PacifiCorp does not challenge most of the specific findings contained in the Final Order, instead it primarily seeks reconsideration of the Commission's decision to reject the overall rate increase because the Commission cannot "establish whether the proposed rates would be fair, just or reasonable" without a method to allocate costs to Washington.[7] PacifiCorp also challenges the Final Order on the grounds that the Commission misapplied the used and useful standard, and that the end result (i.e., no rate increase) violates the U.S. Constitution.

III. ARGUMENT

A. Standard of Review

4 The Commission may grant reconsideration of a final order if a party files a request stating the specific grounds upon which relief is requested within ten days of

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[4] Final Order at ¶ 1.
[5] Id. at ¶¶ 1-2, 7-8.
[6] Id. at ¶ 7.
[7] Id. at ¶ 64.

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service of the order.[8] The purpose of a petition for reconsideration is to request that the Commission change the outcome regarding one or more issues in the final order.[9] PacifiCorp retains the burden of proof to establish that reconsideration should be granted.[10] Reconsideration should be denied if PacifiCorp cannot identify portions of the order that are erroneous or incomplete.[11] The Commission also should reject the reconsideration request if it is not well-reasoned or mischaracterizes and distorts the Commission's order.[12] The Commission should reject PacifiCorp's Petition because the Company mischaracterizes the Final Order and the evidence in the record, and has not identified any erroneous or incomplete portions of the Final Order.

B. The Commission's Application of the Used and Useful Standard is Consistent with Washington Law and Commission Precedent

5 In the Final Order, the Commission ruled that PacifiCorp should not be allowed to increase rates because it had not demonstrated that its proposed cost allocation methodology properly assigned the cost of resources to Washington that are "used and useful" for Washington ratepayers.[13] PacifiCorp challenges this Commission decision based on arguments that: 1) the Commission misapplied the used and useful standard; 2) the used and useful standard cannot be used to bar rate relief without consideration of the overall end result; 3) PacifiCorp's commitments made in the 1987 Merger are irrelevant;

8/ RCW § 34.05.470; WAC § 480-07-850(1).

9/ WAC § 480-07-850(1).

10/ See RCW § 80.04.130(4); WAC § 480-07-540; WUTC v. PacifiCorp, Docket No. UE-050684, Order No. 01 at ¶ 11 (May 24, 2005).

11/ WAC § 480-07-850(2).

12/ E.g. WUTC v. Puget Sound Energy, Inc., Docket No. UE-031725, Order No. 15 at ¶¶ 5, 26 (June 7, 2004).

13/ RCW § 80.04.250.

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4) the Final Order is inconsistent with past decisions allowing rate increases without resolving cost allocation issues; and 5) the Commission ignored evidence that its eastern resources provide benefits to Washington, and thus, satisfied the used and useful standard. As explained below, PacifiCorp's arguments are not a basis for granting reconsideration because they are based on a misunderstanding of the relevant legal standards, Commission precedent, and the conclusions reached by the Commission in the Final Order.

1. The Used and Useful Standard Requires the Commission to Remove All Costs from Rate Base that Are Not Used and Useful in Washington

6 Washington law prevents the Commission from authorizing a utility to include property in its rate base that is not used and useful for service to Washington customers.[14/] When setting rates, RCW § 80.04.250 requires the Commission "to ascertain and determine the fair value for rate making purposes of" utility property that is "used and useful for service *in this state* . . . ."[15/] Consistent with this controlling statutory requirement, the Commission found that the Company's eastern control area resources had not been shown to be used and useful in this state, and therefore, could not be included in rates.[16/] The Commission concluded that a resource must directly or

[14/] RCW § 80.04.250; People's Org. for Wash. Energy Res. v. WUTC, ("POWER I") 101 Wn.2d 425, 430 (1984).

[15/] RCW § 80.04.250 (emphasis added).

[16/] Final Order at ¶¶ 49, 62, 68.

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indirectly provide tangible and quantifiable benefits to Washington ratepayers to be considered used and useful.[17]

7 The Commission's requirement that a resource must at least provide indirect benefits to Washington is not, as PacifiCorp claims, a new requirement, nor is it contrary to Washington law and Commission precedent. If anything, the Commission's decision to allow a resource to be considered used and useful if it provides indirect benefits,[18] is a weakening of the standard.

8 The cases cited by PacifiCorp in its Petition support the Commission's conclusion that benefits must be provided to Washington for a resource to be considered used and useful. PacifiCorp cites Pacific Telephone, a 1943 case, for the proposition that a resource cannot be excluded from rate base because the resource is not exclusively dedicated to Washington, and that Washington's share of the costs of such resources should be resolved through an allocation process.[19] It is strange that PacifiCorp relies so heavily upon the holding of an old case that the Washington Supreme Court has criticized and declined to follow after concluding that:

> We are not inclined to twist or redefine the plain language of RCW 80.04.250 in order to achieve consistency with *Pacific Telephone*. Instead, we question the reasoning of the *Pacific Telephone* court, which *failed to ground its decision upon any analysis of the controlling statute*.[20]

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[17] Id. at ¶¶ 50-51.
[18] Final Order at ¶ 51 n.72 (indirect benefits are defined as "avoided costs, off-system sales revenues or other systemwide benefits").
[19] Petition for Reconsideration at ¶ 6 (citing State ex rel. Pac. Tel. & Tel. Co. v. Dept. of Pub. Serv. of Wash., 19 Wn.2d 200 (1943) ("Pacific Telephone")).
[20] POWER I, 101 Wn.2d at 433 (emphasis added).

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9 Regardless of whether Pacific Telephone is still good law, the case is consistent with the Commission's decision in this proceeding. The Pacific Telephone Court concluded that costs used in both interstate and intrastate service cannot be entirely removed from rate base on the grounds that they are primarily used in interstate service, but should be allocated among interstate and intrastate customers.[21/] The Court also found that, if property was not used and useful, then the proper remedy is to completely remove the property from rate base. Specifically, the Court upheld the Department of Public Works' decision to exclude from rate base certain property that the Department found was not being used to provide service to customers.[22/]

10 In this proceeding, PacifiCorp has not shown that the majority of its eastern resources provide *any* service to Washington, and the Commission concluded that these costs should be excluded until PacifiCorp makes such a showing.[23/] Consistent with Pacific Telephone, the Commission excluded costs PacifiCorp had not shown to be used and useful, but concluded that it would allocate a portion of the costs of PacifiCorp's eastern resources if the Company could demonstrate that they are used, useful and provide benefits to Washington.

11 PacifiCorp's reliance upon the POWER I case also is curious, as it was this decision which strongly rejected the Commission's inclusion of Construction Work in Progress ("CWIP") in rate base. The POWER I Court concluded that property is used

21/ Pacific Telephone, 19 Wn.2d at 229.
22/ Id. at 230.
23/ Final Order at ¶¶ 49, 62, 68.

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and useful only if it "is employed for service in Washington *and* capable of being put to use for service in Washington."[24/] Acknowledging that the term "service" is broadly defined, the Court reasoned that "even the broadest interpretation of 'service' does not include lack of service."[25/]

12 PacifiCorp argues that the legislature's amendment to RCW § 80.04.250 after the POWER I decision to allow the Commission to include CWIP in rate base means that investments providing no service to Washington can be included in rates as used and useful.[26/] PacifiCorp is confused. The amendment to RCW § 80.04.250 provided a single, limited exception to the rule that investments must directly provide service to be considered used and useful. The fact that the legislature did not change the basic terms of RCW § 80.04.250, but only made an exception for CWIP, means that the legislature did not intend to allow the Commission to include other investments that provide no service in rate base.

13 PacifiCorp also cites a 1984 Commission decision to include Colstrip 3 in rate base for the proposition that remote generating plants can be included in rate base.[27/] As explained in ICNU's Reply Brief in this proceeding,[28/] Colstrip 3 could provide electric service to PP&L's customers on the west coast,[29/] and had been used to provide

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24/ POWER I, 101 Wn.2d at 430 (emphasis in original).
25/ Id. at 432.
26/ Petition for Reconsideration at ¶ 7.
27/ Id. at ¶ 8.
28/ ICNU Reply Brief at ¶ 13.
29/ Puget Sound Energy, Inc., 88 FERC ¶ 63,001 at 65,003-04 (July 15, 1999).

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electricity; therefore, the Commission found that it was used and useful.[30/] This decision is distinguishable because the disputed eastern control area resources in this proceeding have not been shown to be able to provide electric service or otherwise benefit, or to have ever benefited, Washington customers.

14 PacifiCorp argues that "[t]he remoteness of a plant's location was never previously used as a basis for rejecting any of the Company's resource costs . . . ."[31/] The Company's argument ignores that, in the modern era, PacifiCorp is the only electric utility that has sought to charge Washington ratepayers costs of resources that cannot physically be used to serve Washington customers. In any event, this statement is false. The Company is well aware that, under a prior version of the used and useful statute, the Washington Supreme Court has approved the Commission's predecessor agency's decision to exclude costs from PP&L's rates because they did not serve Washington.[32/] The Supreme Court upheld the decision that generating facilities outside of the state of Washington could be included in rates only if they provided electricity to Washington customers.[33/]

15 Finally, PacifiCorp argues that other utility commissions "have not imposed a rigid application of the 'used and useful' standard"[34/] and that the Commission's application of the used and useful standard may cause problems for other

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30/ WUTC v. PP&L, Docket No. U-83-57, Second Suppl. Order at 9 (June 12, 1984).
31/ Petition for Reconsideration at ¶ 9.
32/ State ex rel. PP&L v. Dep't of Pub. Works et al., 143 Wn. 67, 82-83 (1927).
33/ Id.
34/ Petition for Reconsideration at ¶ 11.

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Washington multi-state utilities.[35/] PacifiCorp's reference to other jurisdictions is irrelevant because they apply different statutes and appear to refer to electric utilities that, unlike PacifiCorp, operate on an integrated basis. PacifiCorp's reference to Avista's Coyote Springs resource not having firm transfer rights to Washington is also not relevant because the facts of the Avista proceeding are not in evidence. In addition, the Commission did not require PacifiCorp to prove that its resources provide direct benefits that are dependent upon firm transfer rights, but allowed PacifiCorp to show its resources were used and useful under a less rigid standard of "indirect benefits."[36/] Thus, PacifiCorp has failed to show that the Commission's application of the used and useful standard in RCW § 80.04.250 is erroneous.

2. The Commission Properly Rejected PacifiCorp's Entire Rate Increase Request Because the Company Failed to Prove that Its Rates Should Be Increased

16 PacifiCorp argues that the Commission cannot apply the used and useful standard to relieve itself of the obligation to consider "whether the rates under which the Company operates in Washington are confiscatory."[37/] PacifiCorp claims that the Final Order violates Washington and federal case law because it allegedly uses the "'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 the results

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[35/] Id. at ¶ 10.
[36/] Final Order at ¶ 51.
[37/] Petition for Reconsideration at ¶ 16-19.

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produced by the decision."[38] Reconsideration should not be granted because PacifiCorp's arguments are based on a misconstruction of the Final Order.

17 PacifiCorp's failure to meet its burden of proof does not raise constitutional confiscatory rate issues. The Commission rejected PacifiCorp's rate increase because the Company failed to meet its burden of proof to increase rates. The Commission recognized that PacifiCorp based its "entire general rate case in this proceeding on the Revised Protocol" and that the Commission cannot establish new rates without a method to allocate costs.[39] PacifiCorp does not have a constitutional right to collect costs from ratepayers that the Company has not proven should be charged to customers. Reconsideration is not appropriate, nor are PacifiCorp's rates confiscatory, merely because the Company failed to meet its burden of proof.

18 PacifiCorp's assertion that the Commission did not analyze the overall reasonableness and end results is based on a misreading of the Final Order. As the cases cited in PacifiCorp's Petition explain, the Commission, in addition to considering statutory requirements like the used and useful standard, must review whether the end result falls within a zone of reasonableness. The Commission's Final Order fulfilled this requirement.

19 The Commission reviewed whether PacifiCorp's existing rates would provide the Company with sufficient revenues. First, the Commission concluded that the

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[38] Id. at ¶ 19.
[39] Final Order at ¶ 64.

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Company did not provide proof that its current rates are insufficient.[40] Then, the Commission specifically found that the Company's current rates are fair, just, reasonable and sufficient.[41] The Commission fulfilled its constitutional responsibilities to ensure that the end result is within the constitutional zone of reasonableness because the evidence presented by PacifiCorp did not establish that its current rates were insufficient or confiscatory

20 The Commission went even further and reviewed whether PacifiCorp's return on equity ("ROE") would provide the Company an opportunity to attract capital on reasonable terms. For reconsideration to be proper and PacifiCorp's rates to be considered confiscatory, the Company must show that the rates authorized by the Commission are outside of the zone of reasonableness necessary to allow PacifiCorp an opportunity to attract the necessary capital to meet its Washington utility operations.[42] The Company has not done so.

21 The Commission specifically considered the standard regarding confiscatory rates, and concluded that "this rate of return should permit PacifiCorp to maintain an investment grade credit rating and attract the capital necessary to meet its public service obligations."[43] PacifiCorp's confiscatory rates arguments in its Petition do not challenge the Commission's conclusions regarding the Company's ROE or that the Company will be able to attract necessary capital. Contrary to PacifiCorp's

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[40] Id. at ¶¶ 61, 65.
[41] Id. at ¶ 65.
[42] U.S. West Communications, Inc. v. WUTC, 134 Wn.2d 74, 117 (1997).
[43] Final Order at ¶ 264.

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assertions, the Commission carefully reviewed the end result of the Final Order and found that its rates meet all of the constitutionally required tests.

3. PacifiCorp Should Not Be Permitted to Renege on Its Merger Commitments

22 The Commission found that PacifiCorp is not entitled to recover all of its system wide costs from Washington ratepayers recognizing that "the Company created and accepted the risk that divergent allocation decisions among the states might result in under-recovery when it chose to merge 20 years ago."[44/] PacifiCorp complains that requiring the Company to honor its promise that it would accept this risk is "unfair" because: 1) the Company's prior commitments have nothing to with whether the eastern resources are used and useful for Washington customers; 2) the Company only promised to hold Oregon (not Washington) harmless; and 3) the Company did not accept the risk that there would be no allocation method.[45/]

23 PacifiCorp again misinterprets the Final Order and thus, its arguments are not grounds for reconsideration. The Commission did not rely upon the Merger commitments when it interpreted the used and useful statute. The Commission referenced the merger commitments because PacifiCorp argued that it is entitled to full recovery and should not bear the risk of inconsistent cost allocation methodologies.[46/] The Commission merely pointed out how hollow this argument was as the Company created and accepted the risk it now claims it should not be responsible for.

44/ Id. at ¶ 56.
45/ Petition for Reconsideration at ¶¶ 12-15.
46/ Final Order at ¶ 56.

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24 The Commission's conclusions regarding the Merger are well supported by the record. The evidence presented by Staff, ICNU and Public Counsel all demonstrated that, during the Merger, PacifiCorp promised to hold all the former PP&L states (not just Oregon) harmless from the risk of different allocation methodologies.[47/] Inherent in the risk that the states may take different approaches to cost allocation is the risk that the Company's proposed allocation methodology would be rejected and the Company would not have a consistent allocation methodology for all of its states.

25 The Commission has not refused to adopt a cost allocation methodology, but has simply rejected the methodologies proposed in this proceeding. The Commission has provided all the parties with detailed, specific guidance regarding the type of cost allocation methodology that will meet the used and useful standard, and it is PacifiCorp's responsibility to propose a methodology that meets these requirements.[48/]

26 The Commission's responsibility is to ensure that PacifiCorp's rates are based on costs incurred in serving Washington. Here, the Commission has done just that. PacifiCorp's failure to fully recover costs associated with providing service in other jurisdictions should be recovered, if at all, from ratepayers in those jurisdictions, not by Washington customers who receive no benefit from the service. The Commission has no obligation to burden Washington ratepayers in such an inequitable fashion.

47/ E.g. ICNU Initial Brief at ¶¶ 16-18.
48/ See Final Order at ¶¶ 67-70.

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4. The Final Order is Not Inconsistent with Past PacifiCorp Rate Cases

27 PacifiCorp argues that the Final Order departs from past Commission decisions increasing PacifiCorp's rates without resolving cost allocation issues.[49] However, this proceeding is different because, as recognized by the Commission, "the Company bases its entire general rate case in this proceeding on the Revised Protocol."[50] Without an ability to allocate costs to Washington, the Commission had no grounds upon which "to establish whether the proposed rates would be fair, just or reasonable . . . ."[51] Unlike the 1999 general rate case, the Commission did not have a reasoned basis to assume that the Company was entitled to any rate relief regardless of cost allocation issues; thus, the Commission property rejected the Company's proposed rate increase.

5. PacifiCorp Did Not Demonstrate that the Eastern Control Area Resources Benefit Washington

28 PacifiCorp asserts that the Company provided evidence that the eastern control area resources provided "tangible and quantifiable benefits" to Washington customers.[52] This assertion is contradicted by the record. The Company did not submit any credible evidence of Washington specific benefits in its direct case because the Company argued that it needed only to establish system wide benefits and allocate its system wide costs to Washington through the Revised Protocol.[53] For example, the

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[49] Petition for Reconsideration at ¶¶ 29-34.
[50] Final Order at ¶ 64.
[51] Id.
[52] Petition for Reconsideration at ¶¶ 35-36.
[53] E.g., Final Order at ¶ 54.

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Company could not identify any specific examples of any benefits to Washington of these resources in the discovery process.[54]

29 PacifiCorp changed its position and argued for the first time at hearing and in briefing that Washington benefited from these resources. The Commission considered and rejected these late arguments concluding that the alleged Washington specific benefits were based on "unsubstantiated broad statements . . . ."[55] In contrast to PacifiCorp, ICNU and Staff provided voluminous and highly credible evidence that the Company's eastern control area resources do not benefit Washington customers.[56] It is ultimately PacifiCorp's burden to show that Washington ratepayers benefited from these costs, and PacifiCorp simply failed to meet that burden.

30 Finally, the Company identifies alleged errors in the Final Order regarding the Commission's application of the used and useful standard.[57] The alleged "inaccuracies" identified by PacifiCorp are either not errors or are immaterial to the conclusions in the Final Order. For example, PacifiCorp disagrees with the finding that "a number of material conditions or modifications" were imposed by other states when adopting the Revised Protocol.[58] The Final Order accurately characterized the orders in other jurisdictions regarding the Revised Protocol. The most basic aspect of a cost allocation methodology is its impact on rates, and the rate caps imposed by Utah and

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[54] Exh. No. 356 (PacifiCorp Response to ICNU DR No. 14.17).
[55] Final Order at ¶ 53.
[56] E.g. Exh. No. 491TC at 35-39 (Falkenberg Direct); Exh. No. 541TC at 9-10, 14-15, 30, 56-127 (Buckley Direct).
[57] Petition for Reconsideration at ¶¶ 29-34.
[58] Id. at ¶ 37.

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Idaho fundamentally altered the revenues PacifiCorp can collect under the Revised Protocol.

31 PacifiCorp's remaining alleged "inaccuracies" relate to insignificant issues, or are merely questions of semantics. For example, PacifiCorp claims that the reference to the Hybrid methodology as a "prior allocation method" is an error because the Hybrid has never been used by the any commission to set rates.[59] Since the Merger, the Commission has never approved a cost allocation methodology and all methodologies previously considered by the Company, including Hybrid, can be called "prior allocation methods."

32 PacifiCorp also points out that, in the Commission's broad summary of the terms "Western control area" and "Eastern control area," the Commission did not specifically note that the Wyoming loads and two former PP&L resources are located in the Eastern control area.[60] While PacifiCorp is technically correct, this information is irrelevant to the Commission's conclusion that the vast majority of PacifiCorp's eastern control area resources have not been shown to provide benefits to Washington. In addition, this "error" is not grounds for reconsideration because it would not alter the overall result of a zero rate increase. ICNU's proposed cost allocation methodology was based on the pre-Merger assets of the Company and recognized that the former PP&L Wyoming loads and resources are located in the Eastern control area.[61] ICNU's proposal

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59/ Id.
60/ Id.
61/ Exh. No. 491TC at 40-41 (Falkenberg Direct).

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cost allocation methodology would have resulted in an overall rate decrease, even though it allocated to Washington a share of the costs and benefits of the Eastern control area resources that were part of PP&L's Eastern control area.[62/]

C. The Record Supports a Reduction in PacifiCorp's Rates

33 PacifiCorp strenuously argues that the end result of the Final Order (i.e., no rate increase) is not supported by the record and claims that "there is virtually no scenario under which the record would support a 'zero' rate increase."[63/] PacifiCorp supports this hyperbole by claiming: 1) the Company was earning a low ROE; 2) the average revenue requirement proposal of PacifiCorp, ICNU, Staff and Public Counsel results in a rate increase; and 3) the Company's Washington specific distribution costs have increased. PacifiCorp's arguments are irrelevant, erroneous or both, and do not warrant reconsideration of the Final Order.

34 PacifiCorp asserts that the "starting point" for an analysis of the end results of the Commission's Final Order is the Company's estimate in its initial filing that it was earning a 3.490% ROE in Washington.[64/] This alleged low ROE is irrelevant and misleading because it is not based on the Company's approved Washington specific costs. Since the Company's initial filing, PacifiCorp has agreed to numerous adjustments lowering its rate proposal. Similarly, the Commission Final Order further disallowed costs, and found that the Company had not demonstrated that the costs of its eastern

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62/ Id.
63/ Petition for Reconsideration at ¶¶ 27-28 (emphasis omitted).
64/ Id. at ¶ 21.

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control area resources should be allocated to Washington. Since the Company cannot earn an ROE on disapproved costs, the Company's allegedly low ROE at the time of its original filing is irrelevant and inaccurate.

35 The Commission should reject PacifiCorp's theory that the end result of the Final Order should be compared with an average of the proposed "cases" of the Company, ICNU, Staff and Public Counsel. ICNU is unaware of the Commission ever setting final rates in a contested rate proceeding based on the average positions of the various parties.[65/] This unique rate setting procedure is inconsistent with the rate setting process in which the Commission sets rates based on the utility's allowed operating expenses, rate base and rate of return on rate base.[66/] Setting rates based on the parties' average positions would violate the Commission's responsibility to ensure that customers are not charged costs that are not used and useful or were imprudently incurred.

36 PacifiCorp's characterization of the overall "cases" of the parties is also highly inaccurate. PacifiCorp claims that its is entitled to at least $11.45 million based on the average of PacifiCorp's $25 million rate increase proposal, Staff's $6.2 million rate increase "case," Public Counsel's $16.3 million rate increase "case," and ICNU's $2.1 million rate reduction "case." The inclusion of the Company's proposed case, which includes full recovery of the costs of the eastern control area resources not shown to be used and useful for Washington, is highly suspect. The overall reasonableness of the

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65/ Notably, Public Counsel did not recommend an overall rate position, as it did not submit testimony on all issues in the rate case.

66/ See People's Org. for Wash. Energy Res. v. WUTC, 104 Wn.2d 798, 810-12 (1985).

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Final Order should not be judged based on a rate increase proposal that includes costs disallowed by the Commission.

37 PacifiCorp distorts the "cases" of Staff, ICNU and Public Counsel. The proposed "cases" of ICNU and Public Counsel fail to include the fact that ICNU and Public Counsel accepted the majority of non-duplicative the revenue requirement reductions proposed by the other parties. For example, the incorporation of only ICNU's power cost and production factor adjustments would reduce Public Counsel's proposed "case" by approximately $13 million.

38 Without support or citations, the Company also claims that the undecided items "would have been resolved favorably for the Company."[67/] The Commission did not decide certain revenue requirement adjustments (like the net power cost stipulation and production factor adjustment) because they relied upon the use of a specific cost allocation methodology.[68/] Therefore, the net power cost stipulation was "moot" because "the Company failed to justify use of the Revised Protocol . . . ."[69/] There is no reason to assume that the Commission would have rejected the uncontested net power cost stipulation, especially the parts that addressed western control area resources, if the Commission had adopted a cost allocation methodology. In addition, while the Commission provided guidance on incentive/bonus issues, there is nothing in the

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67/ Petition for Reconsideration at ¶ 23 n.16.
68/ Final Order at ¶ 66.
69/ Id. at ¶ 111.

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Commission's decisions that lends support to the Company's claim that it would have been entitled to full recovery of these costs.[70]

39 These examples demonstrate the inherent difficulties in relying upon PacifiCorp's cherry-picked versions of the parties' "cases." Contrary to PacifiCorp's assertion that "virtually no scenario" supports a zero rate increase, the positions of ICNU, Staff, and Public Counsel support the Commission's decision not to increase rates. Even under PacifiCorp's version, ICNU's "case" recommended an overall rate decrease.

40 PacifiCorp also argues that it is entitled to at least a $5.9 million rate increase based on the inclusion of "only the items related to distribution costs for the Washington jurisdiction . . . ."[71] Review of only distribution costs would result in improper single issue ratemaking. The Commission strongly disfavors single issue ratemaking because the ultimate rate determination should be "resolved by a comprehensive review" of the filing.[72] Setting rates based only upon distribution costs ignores the fact that the alleged distribution cost increases have been more than offset by other non-distribution related cost reductions and/or the removal of other costs from rates.

41 Ultimately, PacifiCorp has failed in putting forth its own case demonstrating that the Company is entitled to additional revenues. PacifiCorp has not pointed to any evidence to demonstrate that the Commission's Final Order is outside the

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[70] Id. at ¶ 66.
[71] Petition for Reconsideration at ¶ 26-27.
[72] MCI Telecoms. Corp. v. GTE Northwest, Inc., Docket No. UT-970653, Second Suppl. Order at 6 (Oct. 22, 1997).

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range of reasonable options or that the Company will be unable to acquire sufficient capital at reasonable terms to meet its service requirements. PacifiCorp has only pointed to the positions of Staff, ICNU and Public Counsel that, when accurately characterized, strongly support the Commission's Final Order. Given that PacifiCorp has a new owner and many aspects of its costs have changed, the proper approach is to deny the Petition and allow PacifiCorp to file a new rate case with its updated costs and a more defensible cost allocation methodology.

IV. CONCLUSION

42 The Commission should reject PacifiCorp's Petition. The Commission appropriately found that PacifiCorp had not demonstrated that its eastern control area resources are used and useful in Washington and that the Commission could not set rates in this proceeding without an acceptable cost allocation methodology. The Final Order does not result in confiscatory rates and the end result of not increasing rates is well supported by the Commission's analysis and the record in this proceeding. PacifiCorp has not shown any basis that would warrant providing the Company with any rate relief.

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Dated this 16th day of June, 2006.

Respectfully submitted,

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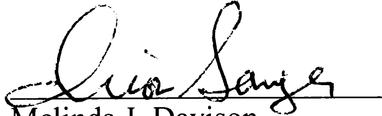

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