BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PACIFICORP, d/b/a PACIFIC POWER & LIGHT COMPANY, Respondent.	DOCKET 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 UE-050412

RESPONSE ON BEHALF OF COMMISSION STAFF

TO PACIFICORP'S PETITION FOR RECONSIDERATION

June 16, 2006

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I. OVERVIEW

1 PacifiCorp seeks reconsideration of Commission Order 04 in Docket UE-050684 ("Order"),[1] in which the Commission rejected the Company's proposed tariffs. The Commission properly ruled that the evidence the Company presented to justify those tariffs was based on a flawed inter-jurisdictional cost allocation method called the Revised Protocol.

2 In particular, the Commission correctly applied RCW 80.04.250, and ruled that PacifiCorp failed to identify and quantify the specific benefits to Washington of the Eastern Control Area facilities the Company wants to include in its Washington rate base, and make Washington ratepayers to pay for in rates.[2]

3 The Company now challenges the Commission's application of RCW 80.04.250 as "unprecedented,"[3] and a "radical" departure from past practice.[4] The Company challenges the Order overall as unconstitutional.[5] Remarkably, the Company even claims to have satisfied the requirements of RCW 80.04.250 as applied by the Commission in its Order.[6]

4 The Company misses the mark each time. The true legal issue is burden of proof. PacifiCorp did not sustain its burden of proving the costs to serve Washington customers. Consequently, PacifiCorp did not sustain its burden to justify a rate increase. No amount of Company rhetoric or creative use of the record can change that.

5 The context of this case is important. Ever since the merger with the higher cost Utah Power & Light Company in 1988, the Company has been pursuing a cost allocation

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[1] "Order Rejecting Tariffs as Filed; Rejecting Stipulation of Net Power Costs; Rejecting in Part, and Accepting in Part, Stipulation on Temperature Normalization Adjustment; Determining Cost of Capital" (April 17, 2006).
[2] *E.g.,* Order at 22, ¶ 51.
[3] *E.g.,* PacifiCorp's "Petition for Reconsideration" ("Petition") (April 27, 2006) at 3, first bullet.
[4] *E.g., Id.* at 3, last bullet.
[5] *E.g., Id.* at 3, second and third bullets.
[6] *E.g., Id.* at 4, first new bullet.

scheme.[7] The Company knew this docket was *the* case for a decision on this critical issue in Washington.[8] And the Company has been aware for many years that Staff opposed the sort of "results oriented" analysis that underpins the Company's Revised Protocol method.[9]

6 Undaunted, the Company chose to use the Revised Protocol method for setting rates in this case. What's more, when other parties offered alternative methods, the Company chose to call those methods "half-baked," "unworkable," "wasting everyone's time" or "outrageous."[10]

7 In a way, the Company has reaped what it sowed. Yet, the Company now says the problem lies with the Commission, because the Order allegedly violates RCW 80.04.250 and confiscates the Company's property. In fact, the Order does no such thing. The Order reflects a straightforward application of RCW 80.04.250, and correctly holds PacifiCorp to its burden of proof under RCW 80.04.130(4).

8 The problem is not the Order. The problem is not RCW 80.04.250 or the Constitution. The problem is the Company's cost allocation method, which imposes excessive costs upon Washington customers related to facilities the Company planned, bid, built and now operates to serve customers elsewhere.

9 The true "end result" of this case reflects the unvarnished fact that PacifiCorp is simply not recovering sufficient costs from its customers in other jurisdictions, primarily those residing in the Company's Eastern Control Area, for whom these newly-acquired

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[7] *E.g.,* Exh. 541TC at 27:11-39:3 (Buckley).
[8] *Wash. Utilities & Transp. Comm'n v. PacifiCorp,* Docket UE-032065, Order 06 (October 27, 2004) at 23, ¶ 51 and at 35, ¶ 95, Ordering ¶ (3)(c): "By October 31, 2005, PacifiCorp will file, either in a general rate proceeding, or an independent proceeding, a proposal to resolve inter-jurisdictional cost allocation in Washington."
[9] Exh. Tr. 967:1-970:8 (Buckley, and acknowledged by Company counsel).
[10] PacifiCorp Opening Brief at 13-15, ¶¶ 39-43.

projects were built in the first place. The Company must solve that problem first, before claiming the Order is somehow unlawful.

II. ARGUMENT

A. Substantial evidence supports the Order

10 There is no question that substantial evidence supports the Order. First, the record proves that many of the Eastern Control Area resources PacifiCorp wants to have Washington ratepayers pay for were planned, bid, built, and are now operated by the Company to serve only customers in Utah and the other Eastern Control Area states.[11]

11 Second, the record proves that those facilities cannot directly serve Washington customers because PacifiCorp has insufficient transfer capability between its two control areas.[12] Indeed, as the Company conceded in prepared testimony: "It would not be practical for the Company to operate as a single control area because of the limited transmission rights between its Eastern and Western Control Areas."[13]

12 Consequently, before requiring Washington ratepayers to pay for Company facilities located in an area that features a limited capability for transferring the power to Washington, the Order does what any commission should do: it requires PacifiCorp to demonstrate those facilities provide tangible and quantifiable benefits to Washington ratepayers before they are included in the Company's Washington rate base. As we explain next, RCW 80.04.250 provides ample authority for the Commission to do so.

B. The Commission Correctly Applied RCW 80.04.250

13 The thrust of PacifiCorp's argument is that the Commission failed to correctly apply RCW 80.04.250, the "used and useful" statute. PacifiCorp argues that in determining rate

[11] *E.g.*, Exh. 541TC at 74:6-118:8 (Buckley), and exhibits cited therein.
[12] *E.g.*, Exh. 541TC at 61:10-65:4 (Buckley).
[13] Exh. 331T at 5:2-4 (Duvall).

base, RCW 80.04.250 does not permit the Commission to consider whether a facility provides benefits to Washington ratepayers, nor whether the cost of that facility is commensurate with those benefits.[14]

14 The Commission should consider the consequences of the Company's argument. If PacifiCorp had its way, RCW 80.04.250 would mandate that ratepayers pay a return of and on any utility facility that is operational, whether or not it provides benefits to customers in any particular state. That is not the law, and it should never be the law.

1. RCW 80.04.250 requires a facility to provide benefits to Washington ratepayers in order to be included in rate base

15 The Commission's "used and useful" analysis is fully justified by the plain meaning of RCW 80.04.250. That analysis is confirmed by a key Washington court case as well as judicial decisions from around the country. The Company is wrong to contend otherwise.[15]

a. The plain meaning of RCW 80.04.250 includes a benefit element

16 RCW 80.04.250 is the Commission's rate base statute.[16] The relevant language reads (emphasis added):

> 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* and shall exercise such power whenever it shall deem such valuation or determination necessary or proper under any of the provisions of this title.

17 In *People's Organization for Washington Energy Resources v. Washington Utilities and Transportation Commission* ("*POWER I*"),[17] the court defined the words "used" and "useful" to include the requirement that the facilities at issue produce a benefit:

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[14] Petition at 4-9, ¶¶ 4-11.
[15] Petition at 5, ¶ 5.
[16] The statute itself does not use the term "rate base." However, in *People's Organization for Washington Energy Resources v. Washington Utilities and Transportation Commission* ("*POWER II*"), 104 Wn.2d 798, 815-16, 711 P.2d 319 (1985), the court referred to RCW 80.04.250 as "a *rate base* statute." (Emphasis in original). The rate base is the value upon which the return component of rates is determined.

> "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*."[18]

18 If this definition of "used" and "useful" adopted by the *POWER I* court is substituted for the words "used and useful" in the RCW 80.04.250, it reads: "ascertain the fair value for rate making purposes of the property of any public service company *employed in accomplishing something* in this state *and serviceable for a beneficial end or object* in this state." (Emphasis added).

19 This simple exercise confirms that RCW 80.04.250 contains a benefit element, and that there must be a connection between the "beneficial end" and the Company's service "in this state."

20 In *POWER I*, the court held that RCW 80.04.250 excluded construction work in progress ("CWIP") from rate base because "an uncompleted facility provides no service whatsoever."[19] It directly follows that RCW 80.04.250 also excludes from rate base a completed, operational facility that provides no benefits to Washington ratepayers.

b. Courts have recognized that the "used and useful" standard includes a benefit element

21 The Commission's application of the "used and useful" standard using a benefits analysis is hardly novel. In his book, *The Process of Ratemaking*, Mr. Goodman generally observes that "[t]he 'useful' aspect of the phrase ['used and useful'] also contains an

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[17] 101 Wn.2d 425, 679 P.2d 922 (1984). While the court has had occasion to interpret this statute, the court has not done so in a wide variety of contexts. Consequently, the Commission should not infer that the last word has been spoken by the court regarding the scope of Commission discretion in applying that statute. Nonetheless, the cases decided to date fully support the Commission's analysis in the Order.
[18] 101 Wn.2d at 430 (emphasis added) quoting Webster's 3rd New Int'l Dictionary at 2524 (1976).
[19] 101 Wn.2d at 432.

element of whether ratepayers will benefit from the investment."[20] Moreover, judicial decisions from around the country confirm the Commission's common sense application of the "used and useful" standard.

22 For example, the District of Columbia court of appeals has noted that determining whether an item of plant is "used and useful" involves an inquiry "whether it benefited ratepayers."[21] The supreme judicial court of Massachusetts has observed that "the 'used and useful' standard generally requires that a utility plant must be in commercial operation and providing net benefits to customers in order for the expenses associated with it to be included in rate base."[22]

23 Similarly, the Mississippi supreme court stated that "[a] public utility is entitled to a fair return only upon the value of such of its property as is useful and being used for the customers' benefit."[23]

24 In sum, the Order is consistent with the plain meaning of RCW 80.04.250, as confirmed by the case law, to require that PacifiCorp demonstrate that its facilities provide benefits to Washington customers before they may be included in rate base.

2. RCW 80.04.250 also requires that the benefits of a facility be commensurate with the facility's rate base value

25 PacifiCorp is particularly resistant to the common sense concept that the benefits of a "used and useful" facility need to be commensurate with the value that is to be included in rate base.[24] As we demonstrate below, the plain meaning of RCW 80.04.250 confirms the

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[20] Leonard Saul Goodman, *The Process of Ratemaking* (1998) at 800.
[21] *Wash. Metro. Area Transit Auth. v. Pub. Serv. Comm'n of the Dist. of Columbia,* 486 A.2d 682, 686 (D.C. Ct. App. 1984).
[22] *Town of Hingham v. Dep't of Telecom. & Energy,* 740 N.E.2d 984, 989 (Mass. 2001).
[23] *S. Hinds Water Co. v. Miss. Pub. Serv. Comm'n,* 422 So.2d 275, 283 (Miss. 1982) (citation omitted).
[24] *E.g.,* Petition at 5, ¶ 5.

Order in this regard. Indeed, this commensurate value analysis is commonly applied, and it has been approved in judicial decisions from around the country.

a. The plain meaning of RCW 80.04.250 includes a commensurate value element

26 Under RCW 80.04.250, the Commission determines the "value" of the "used and useful" property to be included in rate base. The definition of "value" includes the concept of "relative worth, utility or importance."[25]

27 Therefore, it is within the plain meaning of the RCW 80.04.250 for the Commission to consider whether the full cost of a facility should be included in rate base, or whether the relative level of benefits the facility provides justifies including a lower cost, or perhaps no cost at all.

28 This analysis has been undertaken in prior Commission cases. One such case involved a 1983 PacifiCorp case, Cause U-83-57. At issue was whether to include in rate base a new power plant called Colstrip 3. No party argued that Colstrip 3 was incapable of serving Washington ratepayers. Instead, the issue was whether the plant placed the Company in an excess capacity situation and therefore, the project was not "used and useful" because it would provide no net benefits to ratepayers.[26]

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[25] Webster's 3rd New International Dictionary (1968) at 2530. More generally, the court has said that under RCW 80.04.250, the Commission is not bound to a single method of determining value. The Commission is "free to follow any method or combination of methods warranted by law." *State ex rel. Pac. Tel. and Tel. Co. v. Dep't of Pub. Serv.*, 19 Wn.2d 200, 244, 142 P.2d 489 (1943) *("Pacific Telephone")*.

[26] *See, e.g., Wash. Utilities & Transp. Comm'n v. Pacific Power & Light Co.*, Cause U-83-57, 2nd Supp. Order at 7 (June 12, 1984): Noting Public Counsel's position that "the excess capacity provided by Colstrip 3 provides no short-term benefits to the company's ratepayers and no long-run benefits to the company's ratepayers because the Black hills contract commits the output over the long run;" at 6: Noting Staff's position that "the company was in an excess capacity situation" and therefore Colstrip 3 should be excluded from rate base was excess capacity; and at 8: noting that the excess capacity issue was the reason for Staff and Public Counsel to argue that Colstrip 3 "cannot be used and useful because additional power is not needed at this time."

29 In its order, the Commission disagreed that Colstrip 3 represented an excess capacity situation sufficient to warrant removal of Colstrip 3 from rate base.[27] Accordingly, the Commission was able to justify including the full plant amount in rate base.

30 Note, however, that the Commission effectively reduced the impact of the Colstrip 3 investment recoverable in rates by also reflecting the impact of a 40-year power sales contract PacifiCorp had signed to reduce its surplus. This adjustment reduced the Company's rate request associated with Colstrip 3 from $4,308,000 to $201,000.[28]

31 What this case shows is that just because a utility's resources are operational and capable of providing benefits to Washington ratepayers, does not mean that a full share of those resources must be included in the rate base. Rather, the benefits must be commensurate with the value to be included. The Order in this docket as well as the Commission's order in Cause U-83-57 are consistent with this principle.

b. Courts have recognized that the "used and useful" standard includes a commensurate value element

32 There is nothing unusual about the Commission's use of a commensurate benefit analysis. As one legal encyclopedia puts it, the "used and useful" analysis "generally requires that a utility plant must be operating commercially and providing net benefits to customers in order for expenses associated with it to be included in the rate base."[29]

33 This analysis has been approved in judicial decisions from across the country. For example, in *Lone Star Gas Co. v. Corporation Commission of Oklahoma,*[30] the court

[27] The Commission "considered the power reserves of the company" and concluded "the surplus may end in the not too distant future." *Id.* at 8, last ¶.
[28] *Id.* at 11, Findings of Fact 4 and 8. PacifiCorp appealed that decision. The court dismissed the appeal with prejudice, on the Company's motion. *Pacific Corp, d/b/a Pacific Power & Light Co. v. Wash. Utilities & Transp. Comm'n,* Thurston County No. 84-2-01108-1, Motion and Order of Dismissal [with prejudice] (December 23, 1985).
[29] 73 C.J.S. *Public Utilities* § 46 (2005).
[30] 745 P.2d 723 (Okla. 1987).

affirmed a commission order that required the benefits of the utility's facilities be commensurate with their costs. In doing so, the court squarely rejected the limited view of the "used and useful" standard PacifiCorp is advancing in this case.

34 In that case, the regulated company argued for a system-wide average cost of gas, based on a system-wide allocation of plant. Similar to PacifiCorp, the regulated company argued that "as long as each group of customers receives *any* benefit from its operation, a system-wide allocation of transmission plant in rate base is required."[31] The court flatly rejected that argument, stating: "System integration may be justified as a basis for rolled-in rates only *to the extent* that it indicates that *benefits are shared* by all customers on the system."[32] (Emphasis in text).

35 In *City of Cleveland v. Public Utility Commission of Ohio,*[33] the court approved the Ohio commission's use of a cost-benefit analysis to determine the extent to which a plant was "used and useful" and includable in rate base: "It appears to the court that such an analysis is not only appropriate to a determination of excess capacity, but would also be helpful in quantifying a point at which a generating unit can no longer be considered used and useful because of inadequate production performance."

36 In *Citizens of Florida v. Florida Public Service Commission,*[34] the court affirmed a Florida commission's decision that only 78.5% of a facility should be included in rate base because that was the "used and useful" amount. The remaining 21.5% of the facility did not provide benefits to customers because it constituted excess capacity. Consequently, that 21.5% of the facility was not "used and useful," and it was excluded from rate base.

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[31] 745 P.2d at 725.
[32] *Id.*
[33] 406 N.E.2d 1370, 1375 (Ohio 1980).
[34] 488 So.2d 112, 113 (Fla. Dist. Ct. App. 1986).

37 Finally, in *State ex rel. Utilities Commission v. Thornburg,*[35] the court held that "as a matter of law," plant representing excess capacity "[cannot] be considered 'used and useful' as that term is used in the statute."

38 Each of these judicial decisions confirms the Order was correct to require that PacifiCorp prove that the value allocated to Washington of the facilities the Company planned, bid, built and now operates to serve customers in Utah and the other Eastern Control Area states, is commensurate with the benefits (if any) those facilities provide to Washington.

3. PacifiCorp's "used and useful" argument is premised on an incorrect reading of the Order

39 PacifiCorp is wrong to complain that "the remoteness of a plant was never previously used as a basis for rejecting any of the Company's resource costs …"[36] In fact, the Order is quite clear that the problem is not the remoteness of the plants. Rather, the problem is with Company "resources that do not provide direct service [to Washington] or only have occasional or potential value to Washington ratepayers."[37]

40 For example, the problem with the Company's Currant Creek plant is not that it is located in Utah, and remote from Washington. The problem is PacifiCorp's theory that RCW 80.04.250 compels the Commission to include $29.4 million of that plant in rate base,[38] when the evidence shows that PacifiCorp planned, bid and built Currant Creek to serve customers in Utah and other Eastern Control Area states. The Company never considered the needs of Washington customers.[39]

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[35] 385 S.E.2d 463, 495 (N.C. 1989) (citation omitted).
[36] Petition at 8, ¶ 9.
[37] Order 04 at 22, ¶ 51.
[38] Exh. 541TC at 106:9-12 (Buckley).
[39] *E.g.,* Exh. 541TC at 105:16-111:14 (Buckley).

41 The record fully supports rejecting PacifiCorp's theory. As the Commission correctly concluded, "[t]he evidence in the record demonstrates that resources recently acquired in Utah were purchased or built to serve the increasing load in Utah and the Eastern control area and that there are significant transmission constraints impeding the exchange of power between the Western and Eastern control areas."[40] As Mr. Buckley summarized, in the Company's own planning and resource justification and acquisition processes: "PacifiCorp did not consider or quantify how those projects met needs, or provided significant benefits, to the Western Control Area in general, and Washington in particular."[41]

42 In sum, the Commission was correct to bar the Company from including facilities in its Washington rate base absent proof those facilities benefit Washington ratepayers, and the benefits are commensurate with the rate base value of those facilities.

4. The Order is supported by the cases PacifiCorp cites for its "used and useful" argument

43 PacifiCorp offers several cases the Company says discredit the Commission's analysis in its Order. In fact, these cases support the Order.

44 The first case the Company cites is *Pacific Telephone.*[42] PacifiCorp correctly states that in that case, the court reversed a Commission decision that had excluded property held for future use, on the basis that the property was not "used and useful for service."[43] Notably, the Company fails to mention that the court focused on the benefits of including property held for future use in rate base.[44]

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[40] Order 04 at 22, ¶ 53 (citations to the record omitted).
[41] Exh. 541TC at 117:5-8 (Buckley).
[42] *State ex rel. Pac. Tel. & Tel. Co. v. Dep't of Pub. Serv., cited supra at footnote 25, 19* Wn.2d at 229-30.
[43] Petition at 5-6, ¶ 6.
[44] For example, the court ruled that the real property at issue should be included in rate base because it would be used in the company's business "before long." The court said underground conduit should be included because it had been installed in advance of impending highway improvements to avoid substantially higher installation costs. *19 Wn.2d at 229.*

45 However, the more important point is that in *POWER I,* the court severely criticized *Pacific Telephone* because it "failed to analyze the plain language of the predecessor statute."[45] Nonetheless, while it did not reverse *Pacific Telephone*, the court distinguished and limited that decision.[46] Consequently, the Commission should refuse PacifiCorp's invitation to extend that case to operational facilities that the Company has not proved provide benefits to Washington customers.[47]

46 PacifiCorp then discusses *POWER I* and the Commission's order in Cause U-83-57.[48] As we explained above,[49] the *POWER I* court interpreted RCW 80.04.250 to include a requirement that facilities in rate base must be "serviceable for a beneficial end" in this state. PacifiCorp has simply failed to satisfy that standard for many of the facilities it seeks to include in its Washington rate base.

47 PacifiCorp is also wrong to state that in Cause U-83-57, there was "no showing that the plant output [of Colstrip 3] could be delivered to Washington."[50] In fact, as shown in Appendix 1, a Company witness in that case explained in detail the transmission capability available to transport Colstrip 3 power to the western part of the Company's system.[51]

48 This proof stands in stark contrast to the instant case, where PacifiCorp made no showing that its new Eastern Control Area projects can directly serve Washington, or can

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[45] *POWER I,* 101 Wn.2d at 432.
[46] *Id.* at 433.
[47] Under the Uniform System of Accounts, property held for future must be "owned and held for future use in electric service under a definite plan for such use." *18 C.F.R, Subchapter C, Part 101, Uniform System of Accounts, Account 105: "Electric plant held for future use."*
[48] Petition at 6, ¶¶ 7-8.
[49] *See* ¶¶ 17-20, *supra.*
[50] Petition at 7, ¶ 8.
[51] Appendix 1: Transcript pages 1 and 38-40, excerpt from the cross-examination of Pacific Power & Light witness Mr. Steinberg in Cause U-83-57. See especially Transcript page 39, line 24 to page 40, line 23.

provide any other specific benefits to Washington ratepayers commensurate with the amount the Company wants to include in rate base.[52]

49 PacifiCorp goes on to correctly observe that RCW 80.04.250 was amended after *POWER I* to give the Commission discretion to include CWIP in rate base. It is also correct that CWIP is not operational by definition.[53] However, the Company incorrectly concludes from this that the Order is "inapposite."[54] Indeed, the fact that a statutory exception was required, and the Legislature included only CWIP in that exception, confirms the Order is correct: operational facilities may be included in rate base only to the extent those facilities provide benefits to Washington customers.[55]

50 PacifiCorp also points to its last litigated rate proceeding, Cause U-86-02, as an example of the Commission's "long-standing treatment" of using a "rolled-in" allocation of all PacifiCorp's facilities.[56] What the Commission did in that case was to approve an allocation method that reflected a "consensus" of the states and the parties "regarding a transition from the old method to the new method."[57] However, that "transition" was effectively terminated about a year later, when the Company's cost profile dramatically changed due to the merger between lower cost Pacific Power & Light Company and higher cost Utah Power & Light Company.

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[52] As the Company admitted, by its very design, the Revised Protocol method does not require the Company to prove that any project benefits any particular state. *Exh. 331T at 32:21-23 (Duvall).*
[53] Petition at 6-7, ¶ 7.
[54] *Id.* at 7, ¶ 7.
[55] Even under the exception for CWIP (which by definition is not an operational facility), the utility should be required to show a nexus between future service (*i.e.*, benefits to Washington customers) and the level of CWIP to be included in rate base.
[56] Petition at 8, ¶ 9.
[57] *Wash. Utilities and Transp. Comm'n v. Pacific Power & Light Co.,* Cause U-86-02, 2nd Supp. Order at 33 (September 19, 1986).

51 In other words, the "long standing" situation since 1989 is that PacifiCorp has had no consensus on an allocation method, and PacifiCorp has had no approved allocation method in Washington.

52 PacifiCorp goes on to speculate that Avista's acquisition of the second half of the Coyote Springs II project was included in Avista's rate base without transmission capability to serve Avista's customers. The Company thinks Coyote Springs II should have been excluded from rate base under the Commission's analysis in its Order.[58]

53 PacifiCorp is wrong. In Appendices 2 and 3, we have included testimony from Avista Dockets UE-050482 and UE-050483. Avista's testimony in those dockets shows that adequate transmission arrangements were available when the Company needed the Coyote Springs II project. Indeed, the Company testified that rate base treatment was justified under even a "conservative view" of how transmission affected the value of that project to Avista's ratepayers.[59] Staff's testimony in that case shows the acquisition of the second half of Coyote Springs II was consistent with Avista's Integrated Resource Plan, and was justified by many other factors. Staff concluded that Coyote Springs II was prudent and should be included in rate base.[60]

54 Contrast the Avista case with the record in the instant case, in which PacifiCorp's Integrated Resource Plans and related documents show that the Company's new Eastern Control Area facilities were planned, bid, built and are now operated for the benefit of customers in Utah and other Eastern Control Area states, not Washington customers.[61]

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[58] Petition at 8-9, ¶ 10.
[59] Appendix 2, Excerpt of the Testimony of Ronald Peterson, Exhibit 81 in Dockets UE-050482 and UE-050483. See especially page 25, line 22 to page 26, line 19.
[60] Appendix 3, Excerpt of Testimony of Hank McIntosh *et al.* at 21-24, in Exhibit 1 in Dockets UE-050482 and UE-050483.
[61] *E.g.,* Exh. 541TC at 74:6-118:8 (Buckley), and exhibits cited therein.

Moreover, unlike Avista, PacifiCorp made no connection between the benefits these resources provide to Washington (if any), and the cost the Company wants to include in Washington's rate base.

55 The Company also cites two cases from other commissions in an effort to support its flawed theory: a 1973 decision from the Illinois commission;[62] and a 2001 decision from the Michigan commission.[63] These cases do not offer PacifiCorp any help either.

56 For example, the Illinois commission justified application of the "used and useful" standard to include in rate base all the utility's facilities located in its multi-state system, but only after finding those facilities "are integrated in substantial part, into a single system ..."[64] In the Michigan case, the commission was simply deflecting an intervener's argument that absent a physical audit of the utility's plant, the commission could not conclude the plant at issue "exists and is used and useful."[65] No party disputed the fact that the Michigan utility's system was fully integrated.

57 By contrast, PacifiCorp's system is poorly integrated between control areas.[66] As the Company acknowledged: "It would not be practical for the Company to operate as a single control area because of the limited transmission rights between its Eastern and Western Control Areas."[67] The Revised Protocol method fails to reflect this fact by "rolling-in" all resources and allocating a share to all states.

58 In short, the case law supports the Order. The authorities relied on by PacifiCorp cannot carry the load the Company needs them to carry.

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[62] Petition at 9, ¶ 11, *In re Union Elec. Co.*, 1973 Ill. PUC LEXIS 4 (Ill. Comm. Comm'n, October 23, 1973).
[63] *Id.*, *In re Wisc. Elec. Power Co.*, 221 PUR 4th 136 (Mich. Pub. Serv. Comm'n 2002).
[64] 1973 Ill. PUR LEXIS 4 at *10.
[65] 221 PUR 4th at 146.
[66] *E.g.*, Exh. 541TC at 61:10-65:4 (Buckley).
[67] Exh. 331T at 5:2-4 (Duvall).

C. PacifiCorp Did Not Prove that its Washington Rate Base Should Include Facilities the Company Planned, Bid, Built and Now Operates To Serve Customers Elsewhere

59 After extensive argument in its Petition explaining why the Company believes the Order misapplied the "used and useful" statute, PacifiCorp claims that, in fact, it supplied evidence sufficient to satisfy the Order.[68] The Company also provides a list of alleged "inaccuracies" in the Order.

60 As we demonstrate below, the bottom line is that while the Company may have mouthed the words, it never came forth with the facts demonstrating that its newly-acquired Eastern Control Area resources provided benefits to Washington customers commensurate with the value the Company seeks to add to its Washington rate base. Moreover, the alleged "inaccuracies" cited by PacifiCorp are either immaterial, or they are not inaccuracies at all.

1. The record is packed with Company documents proving that PacifiCorp planned, bid, built and now operates its new Eastern Control Area resources to benefit only Utah and the other Eastern Control Area states

61 The Commission was eminently correct when it evaluated the record and concluded that "[t]he evidence in the record demonstrates that resources recently acquired in Utah were purchased or built to serve the increasing load in Utah and the Eastern control area and that there are significant transmission constraints impeding the exchange of power between the Western and Eastern control areas."[69] The Commission cited numerous exhibits in support of this conclusion, all of which are Company documents such as IRPs, RFPs, Board minutes and Company testimony in other jurisdictions.[70]

62 Staff witness Mr. Buckley painstakingly analyzed page after page of these exhibits. He showed the Company was consistent in justifying its new Eastern Control Area resources

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[68] Petition at 21-24, ¶¶ 35-38.
[69] Order 04 at 22, ¶ 53 (citations to the record omitted).
[70] *Id.,* footnote 73.

by their ability to meet the needs of Utah customers and customers in the other Eastern Control Area states. He also showed that in these planning and acquisition documents, the Company failed to identify any benefits of these projects to Washington ratepayers.[71]

63 Company records also fully document the significant transmission constraints that largely prevent its Eastern Control Area resources from directly serving Washington customers.[72] As the Company correctly concluded: "It would not be practical for the Company to operate as a single control area because of the limited transmission rights between its Eastern and Western Control Areas."[73]

64 In the end, PacifiCorp has no reason to complain when the Commission reached the same conclusions the Company itself stated and verified in its own documents.

2. The evidence PacifiCorp cites in its Petition does not change the Commission's analysis

65 Against the weight of the evidence, the Company claims the Commission should reconsider the Order because it allegedly overlooked the "extensive benefits" to Washington from these Utah projects. The Company refers the Commission to Mr. Duvall's testimony in Exhibits 331-T at 34-44, and his Exhibits 332-340, as well as Mr. Taylor's testimony in Exhibit 371-T at 10:14-23.[74]

66 In fact, this is not the sort of evidence that merits reliance by the Commission. First, Mr. Duvall never addressed the fact that PacifiCorp did not plan, bid, build or acquire these new resources to serve Washington customers. Second, the points made by Mr. Duvall in his testimony are very general or self-serving, while the evidence relied on by the Commission is very specific and direct in its reasoning.

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[71] Exh. 541TC at 74:6-118:8 (Buckley), and exhibits cited therein.
[72] *Id.* at 61:10-74:4 (Buckley).
[73] Exh. 331T at 5:2-4 (Duvall).
[74] Petition at 22, ¶ 36, and accompanying footnotes.

67 For example, Mr. Duvall testified that Washington's "share" of new Company resources is 82 megawatts.[75] That figure is self-serving because it is based on Revised Protocol.[76] Moreover, Revised Protocol allocates costs based on the palpability of the results, not because Washington ratepayers caused the Company to incur these costs.[77] Consequently, there is no basis for concluding that Washington's "share" is 82 megawatts, zero megawatts, or some other number.

68 Mr. Duvall also noted that Washington had increasing sales over the 1985-2003 period. From this, he concluded that Washington contributed to the need for the new resources, and that they were prudently acquired to serve Washington.[78] However, this testimony has no weight unless and until the Company ties Washington load growth to a resource the Company planned and built to serve that load. Of course, that is very purpose of the Company's IRP and bidding processes. As the Company's own documents from those processes show, the resources the Company added in the Eastern Control Area were planned and built to meet the needs of customers there, not in Washington.

69 Indeed, at no point did Mr. Duvall provide the critical nexus between the new Eastern Control Area facilities the Company seeks to include in its Washington rate base and the needs of its Washington customers.

70 Mr. Duvall also pointed to future load growth in Washington that will require additional resources. However, the Company will address those needs in the future, under its future IRPs. At that time, if the Company can demonstrate it is acquiring a resource to meet the needs of its Washington customers, and that resource is the least cost means of

[75] Exh. 331T at 37:22-38:1 (Duvall).
[76] Exh. 339 at 1, note 2 (Duvall).
[77] Exh. 541TC at 56:9-14 (Buckley).
[78] Exh. 331T at 1-6 (Duvall).

doing so, it is clear from RCW 80.04.250 and the Order that such a resource belongs in the Washington rate base.

71 The remainder of Mr. Duvall's testimony consisted of overbroad statements about various projects providing "peak diversity" benefits, access to wholesale markets, and the ability to use Eastern Control Area resources in the West, "so long as the Eastern Control Area does not need them."[79]

72 Conspicuously absent from this testimony is any quantification of these "benefits," or any showing that any such "benefits" justify including the millions of dollars worth of new generating facilities located in Utah which the Company wants Washington ratepayers to pay for via inclusion in the Company's Washington rate base. Also absent is any discussion of how these "benefits" can accrue to Washington customers, given the significant transmission constraints on the Company's system. Those constraints severely limit the extent to which the Company can use these new Eastern Control Area resources to serve the West.

73 For example, during what periods does the Eastern Control Area "not need" the Currant Creek project? During those periods (assuming there are any), will the Company have sufficient transmission capability to transfer that power to the West? If so, would it be cheaper for the Company to make a market purchase or use an alternative resource to serve the West in that situation?

74 These are just a few of the key questions PacifiCorp needed to analyze and answer. Mr. Duvall's testimony provided no analysis and no answers. Indeed, the Company has effectively answered these questions in its IRPs, RFPs and related documents, which show the Company did not build Currant Creek to serve Washington customers.

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[79] Exh. 331T at 38:20-40:20 (Duvall).

75 The exhibits the Company now wants the Commission to reconsider fare no better than Mr. Duvall's testimony. Exhibit 333, the GRID Transmission Topology, simply confirms that significant transmission constraints restrict the flow of power between the Company's two control areas.[80] Exhibit 334 is PacifiCorp's "Risk Analysis," which, as Mr. Buckley explained, has nothing to do with cost-causation and is unreliable because it is highly sensitive to the assumptions and estimates used.[81]

76 Exhibits 335-337 reflect various load growth analyses, but the issue is not growth. The issue is how the Company responds to growth. As we have outlined above, according to what PacifiCorp demonstrated in its IRPs and related documents, the Company planned, bid, acquired, and now operates its new Eastern Control Area resources to meet load growth there.

77 Exhibit 338 is a Joint Report on prudence of various resources, but as we mentioned earlier, that Report shows that Commission Staff noted that future analysis may be required to justify a "fair, just and reasonable allocation of the cost burdens" of these new projects.[82] The Company did not provide that analysis in this case.

78 Exhibit 339 purports to measure "Washington System Benefits." However, this is just another self-serving exhibit because once again, these are figures based on Revised Protocol.[83] Exhibit 340 shows diversity benefits may exist, but it makes no attempt to prove whether these benefits justify the Company's proposal to add millions of dollars of new Eastern Control Area resources to the Company's Washington rate base.

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[80] *See e.g.,* Exh. 541TC at 61:10-65:4 (Buckley).
[81] *Id.* at 55:1-7 (Buckley).
[82] Exh. 338 at 4, last ¶ (page iii of the document).
[83] Exh. 339 at 1, note 2.

79 Finally, Mr. Taylor's testimony in Exhibit 371-T at 10:14-23 (where he said that fast load growth in other states results in lower cost allocations to Washington) was discredited by Mr. Buckley's testimony that under Revised Protocol:

> Instead of paying for the costs it clearly causes (from resources specifically acquired to meet its needs), a fast growing state would get the benefit from shifting a portion of those costs to other states, and at the same time it would get the benefits of being allocated a larger share of lower cost resources in other jurisdictions; resources that may not even be able to serve that load.[84]

80 The record cried out for fact-based Company analysis demonstrating: 1) how Washington ratepayers are benefited by the facilities the Company itself said were planned, bid, built and acquired to benefit only customers in Utah and the other Eastern Control Area states; and 2) that the value of any such benefits is commensurate with the cost the Company wants to include in its Washington rate base. Instead of analyzing those issues, the Company offered only generalities and either unsupported or self-serving statements.

3. Staff's analysis of PacifiCorp's alleged "inaccuracies" in the Order

81 In its Petition, the Company uses several "bullets" to list alleged "inaccuracies" in the Order. Below we respond to each bullet in the order presented in the Petition.

82 **Wyoming.**[85] The Company correctly notes that portions of Wyoming that were previously served by Pacific Power & Light Company are now in the Eastern Control Area.[86] However, this does not in any way change the nature and extent of the deficiencies in the Revised Protocol.

83 **Conditions imposed by other states.**[87] The Company complains that the Order "unfairly maligns" those state commissions who have adopted the Revised Protocol by

[84] Exh. 541TC at 121:3-8 (Buckley) (emphasis in text).
[85] Order 04 at 10, footnote 10.
[86] Petition at 22, ¶ 27, first bullet.
[87] Order 04 at 11, ¶ 26.

referring to the probable lack of a "lasting consensus" among those states regarding use of the Revised Protocol. According to PacifiCorp, none of the conditions imposed by those commissions "relate to the essential features of the Revised Protocol." The Company also argues the Commission's statements are not supported by the record, and that the Revised Protocol actually reduces Washington's revenue requirements.[88]

84 First, the Order maligns no one. It simply and fairly summarizes the facts, and makes reasonable inferences that are fully supported by the record.[89] For example, the Revised Protocol itself expressly allows any commission to reject its application if it does not produce "just and reasonable results."[90] In this context, the fact that several commissions saw fit to take the apparently unnecessary step of requiring additional express conditions around application of the Revised Protocol, is good evidence that if any consensus exists, it is a fragile one.

85 Second, the Company is simply wrong in saying the conditions other states have imposed relate only to "transitional matters that limit the rate impact" of the Revised Protocol, and not "the essential features of the Revised Protocol." In fact, the conditions imposed by other states mean that the "essential features" of the Revised Protocol may not be fully translated into rates for many years to come in some states. As Exhibit 544C demonstrates, PacifiCorp forecasts that in order to gain "acceptance" of the Revised Protocol, the conditions it agreed to in Utah and Idaho that will cause the Company to lose

[88] Petition at 23, ¶ 37.
[89] Indeed, it is not the Commission, but PacifiCorp, who sought to mischaracterize the actions of those commissions. Recall that PacifiCorp tried to claim that those commissions said the Revised Protocol is "grounded in cost causation principles." *Exh. 5T at 13:19 (MacRitchie).* In fact, none of the commission orders "approving" the Revised Protocol said any such thing.
[90] Revised Protocol Part XIII.C:9-13, contained in Exh. 362 at 14:9-13 (Taylor).

millions of dollars.[91] Obviously, this proves the conditions imposed by other states go directly to the "essence" of the Revised Protocol: its applicability.

86 The Company is also incorrect to say Mr. Buckley made "no statement regarding the long term materiality of [the conditions imposed by other states]."[92] In fact, Mr. Buckley explained in detail why the Revised Protocol method is unsustainable.[93] The record fully supports the Order in this regard.

87 **Hybrid Model.**[94] PacifiCorp takes issue with the statement in the Order that the Hybrid Model is a "prior allocation model" that the Company compared to Revised Protocol in this case.[95] In fact, the Order is correct.

88 While it is true the Hybrid Model has not been approved by the Commission, the Order never said it was "approved." In Order ¶ 34, the Commission simply stated that the Company was comparing the Revised Protocol to the Hybrid Model and the Modified Accord Model; not that the Hybrid Model had been "approved." In footnote 40, the Order correctly cites exhibits in which the Company compared the Hybrid Model and the Revised Protocol,[96] as well as exhibits in which the Company compared Modified Accord and the Revised Protocol.[97]

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[91] Exh. 544C (Buckley).

[92] Petition at 23, first six lines, and footnote 24. If PacifiCorp's point is that footnote 14 of Order 04 could use more cites to the record, the Commission could add the record cites from footnote 93 below as examples.

[93] Exh. 541TC at 136:1-139:3. In its Reply Brief, Staff reiterated Mr. Buckley's point that the Revised Protocol method is not sustainable. *Staff Reply Brief at 8-10, ¶¶ 28-35.*

[94] Order 04 at 16, ¶ 34.

[95] Petition at 23, ¶ 37, first bullet.

[96] Exh. Nos. 333 and 334.

[97] PacifiCorp is not entirely correct to say the Hybrid Method has not been used to set rates by means of a stipulation. In the settlement of PacifiCorp's last rate case, Docket UE-032065, Staff evaluated the reasonableness of that settlement using a control-area based analysis. *See* Docket UE-032065, Order 06 at 20, ¶ 46, quoting Staff witness Mr. Braden describing Staff's view that the settlement was not based on adoption of the Protocol method, but rather by "looking at our own evaluation methods and then striking a compromise."

89 **Lack of Quantification of Benefits.**[98] PacifiCorp objects to the Commission's conclusion that the Company identified, but failed to quantify the benefits of an "integrated system." PacifiCorp refers to the South Idaho Exchange contract, the overall rate reductions associated with the 1989 merger, and a so-called "study" showing $300 million of integration benefits.[99]

90 The reference in the Order to which PacifiCorp objects relates to power supply. The Company supplies no evidence that the overall rate reductions associated with the 1989 merger ($59 million total company) were all power supply related, as opposed to lower overhead costs or other similar cost savings. In any event, those benefits were limited to those the Company expected to achieve the first year after the merger.[100]

91 The South Idaho Exchange contract translates to only 90 average megawatts. The Company may be able to prove that this relatively small contract provides net benefits to Washington customers. However, that would not justify including in rate base millions of dollars worth of other projects such as Currant Creek, Gadsby, Lake Side, the West Valley Lease, and the other facilities the Company planned, bid, acquired and now operates solely for the benefit of customers in Utah and the other Eastern Control Area states.

92 PacifiCorp never produced the "study" purporting to show $300 million in value due to the merger. It was only mentioned by Mr. MacRitchie during cross-examination.[101] If the Company thought this was important information, it should have produced the study so it could be read, evaluated, and its relevance to this case determined.

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[98] Order 04 at 16-17, ¶ 36.
[99] Petition at 23-24, ¶ 37.
[100] *In re Application of PacifiCorp to Merge,* Docket U-87-1338-AT, 2nd Supp. Order at 8 (July 15, 1988).
[101] Tr. 334:12-24 (MacRitchie).

93 **Oregon's right to adopt the Hybrid Model.**[102] The Company challenges the Commission's statement that the Oregon commission reserved the right to adopt the Hybrid Model, if it produces results more favorable than Revised Protocol. According to the Company, Oregon merely adopted the Hybrid Model as a "comparator."[103]

94 The Company's argument rests on an immaterial distinction. The Revised Protocol itself expressly provides the Oregon commission the right not to apply that method whenever it fails to produce "just and reasonable results."[104] In this context, the Oregon commission's use of the Hybrid Model as a "comparator" provides a fair basis for the Commission to conclude that if the Hybrid Model generates more favorable results than Revised Protocol, Oregon could set rates using the Hybrid Model. Indeed, the Revised Protocol wholly enables such a result by failing to define "just and reasonable results."

95 PacifiCorp goes on to correctly quote the Oregon order's language approving the Revised Protocol. However, the Company provides an unbalanced view by failing to quote the provisions of the that order in which the Oregon commission also ordered: 1) that the Hybrid Model "should not be abandoned;" 2) that PacifiCorp must file a "fully functional" version of that model; and 3) that PacifiCorp must conduct further studies on that model.[105]

96 No matter how you cut it, the significant conditions imposed in Oregon provide a clear basis for concluding that the Oregon commission expressly declined to give the Revised Protocol a ringing endorsement, and that the Oregon commission views the Hybrid Model as a viable alternative allocation method.

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[102] Order 04 at 25-26, ¶ 60.
[103] Petition at 24, first new bullet, ¶ 37.
[104] Revised Protocol Part XIII.C:9-13, contained in Exh. 362 at 14:9-13 (Taylor).
[105] *In re PacifiCorp Request to Initiate an Investigation of Multi-Jurisdictional Issues and Approve an Inter-Jurisdictional Cost Allocation Protocol,* Docket UM 1050, Order 05-021 at 12 and at 13, ¶ 2 (Oregon PUC, January 12, 2005).

97 In sum, the Commission's statement in ¶ 60 of the Order is a very reasonable and permissible inference from the record.[106]

98 **Western Control Area hydro resources.**[107] PacifiCorp takes exception to the Commission's statement that the Company is expected to include "the full value" of hydro-electric resources in the Western Control Area" in any proposed allocation model for Washington. PacifiCorp points out that because Pacific Power & Light customers in Wyoming supported those resources for as long as Washington customers, it would be "inequitable not to recognize their right to the benefits of those resources."[108]

99 This Company argument is actually a compelling argument in support of the Order. Note that the Company does *not* say Utah customers and customers from the other states in the Eastern Control Area (other than Wyoming) supported these resources. The Company does *not* say equity requires those customers to share in the benefits of these resources. It directly follows that the Revised Protocol is unfair and inequitable because it confers on all Eastern Control Area states a significant share of the benefits provided by these low cost Western Control Area resources.

100 In any event, PacifiCorp's argument is based on a misreading of the Order. The Order did not say Wyoming must be given "zero value" for these hydro resources, or that Washington must be given "100% of the value." The Order simply said Washington needs to be given "full value."[109] This is a clear description by the Commission of the Company's

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[106] Three of the four state states adopting Revised Protocol have done so in settlements in which numerous conditions were imposed that limit the application of the Revised Protocol. Consequently, it was also fair for the Commission to state in its Order that these conditions were "accommodations to resolve a pending case," because that is generally true of any settlement condition.

[107] Order 04 at 28, ¶ 70.

[108] Petition at 24, last bullet, ¶ 37.

[109] Order 04 at 28, ¶ 70. At this moment, Staff is not in a position to say what Washington's properly-allocated share of these resources will be in an appropriately-designed cost allocation method. The Order did purport not calculate that share, either.

need to provide an appropriate allocation of these benefits. It is also a clear rejection by the Commission of the Revised Protocol method, which provides Washington less than full value of these resources.

101 The Commission correctly ruled that the Revised Protocol's treatment of Western hydro resources is inappropriate. The Company's argument further reinforces that ruling.

D. The Order Is Easily Reconciled With Prior Commission Orders for PacifiCorp

102 PacifiCorp describes the history of the Commission's rate orders for the Company since 1986, and concludes that the Order "radically departs" from these prior decisions.[110] PacifiCorp argues that this history shows the Commission set rates for PacifiCorp "even in the absence of an agreement on an inter-jurisdictional cost allocation methodology."[111]

103 In fact, most of these prior orders were non-precedent setting settlement approvals. In the others, the Commission placed upon the Company the responsibility of proving a valid cost allocation method. The bottom line is that the Company had no legitimate expectation that it would be granted rate relief in this case without providing a valid allocation of its costs.

104 **Cause U-86-02.** PacifiCorp refers first to Cause U-86-02, in which PacifiCorp claims the Commission set rates using a system-wide allocation method.[112] In fact, as we described earlier, the Commission in that case actually approved a transitional allocation method that reflected a "consensus" of the states and the parties "regarding a transition from the old method to the new method."[113] The "transition" was effectively terminated by

[110] Petition at 19-21, ¶¶ 29-34.
[111] *Id.* at 19, ¶ 29.
[112] *Id.*, apparently referring to page 8, ¶ 9.
[113] *Wash. Utilities and Transp. Comm'n v. Pacific Power & Light Co.,* Cause U-86-02, 2nd Supp. Order at 33 (September 19, 1986).

Pacific Power & Light's decision to merge with higher cost Utah Power & Light, which fundamentally changed the Company's cost profile.

105 **Docket U-87-1338-AT.** In Docket U-87-1388-AT, the Commission approved Pacific Power and Light Company's merger with Utah Power & Light Company. The Company correctly states that in its order, the Commission was concerned that Pacific Power & Light was merging with a higher cost utility, 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."[114]

106 PacifiCorp goes on to state that this condition was "fulfilled."[115] However, the critical issue is how that condition was "fulfilled." PacifiCorp does not address that issue, but the record does. Indeed, the record contains documents from PacifiCorp's least cost planning[116] process that prove PacifiCorp is poorly integrated between control areas,[117] and that many of the projects the Company now seeks to place in Washington rate base were planned, bid and built by the Company exclusively to serve customers in Utah and the other Eastern Control Area states.[118] The Revised Protocol fails to recognize these facts, which is one reason why the Commission properly rejected it.

107 **Docket UE-991832.** The Company cites the Commission's order in Docket UE-991832 for the proposition that the settlement in that case included "an allowance for return

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[114] Petition at 20, ¶ 30, quoting *In re Application of PacifiCorp to Merge,* Docket U-87-1338-AT, 2nd Supp. Order at 14 (July 15, 1988). The Commission went on to say that "[i]n the meantime, the Commission views Pacific's current average system costs as the appropriate basis for rates." This was a clear warning to the Company that if the least cost planning process did not reflect benefits to Washington customers of the resources used to serve customers in the former Utah Power & Light states, the Commission would ignore the merger when setting rates.
[115] Petition at 20, ¶ 30.
[116] The terms "least cost planning" and "integrated resource planning" are interchangeable.
[117] *E.g.,* Exh. 332 (Duvall), as explained in Exh. 541TC at 61:10-65:4 (Buckley).
[118] *E.g.,* Exh. 541TC at 74:6-118:8 (Buckley), and exhibits cited therein.

on some yet to be determined part of [resources acquired by PacifiCorp since 1986]."[119] The Company apparently believes this is precedent either for setting rates without determining a specific rate base, or that Eastern Control Area resources were included in rate base in that case. PacifiCorp is wrong on both counts.

108 First, it must be pointed out that PacifiCorp is violating the terms of the settlement in Docket UE-991832 by citing that matter as precedent.[120] In any event, the Commission in that case stated only that the settlement rates "implicitly allow PacifiCorp to recover through rates at least some of the costs attributable to the resources PacifiCorp has acquired since its last rate case."[121] Even if this language were considered more than *dictum,*[122] there is nothing in that order or stipulation that finds that any of the Eastern Control Area resources at issue in the instant case were included in rate base for purposes of determining the settlement rate levels in Docket UE-991832.

109 **Docket UE-991262.** PacifiCorp notes that the lack of an acceptable cost allocation method did not prevent the Commission from providing rate credits to customers from the sale of the Company's share of the Centralia plant.[123] PacifiCorp suggests the Commission approved use of the Modified Accord method, but in fact, the Commission did not decide

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[119] Petition at 20, ¶ 31, quoting *Wash. Utilities & Transp. Comm'n v. PacifiCorp,* Docket UE-991832, 3rd Supp. Order at 25, ¶ 66 (August 9, 2000).
[120] ¶ 17(d) of the Stipulation approved in Docket UE-991832 states in pertinent part: "no party shall be deemed to have approved admitted or consented to the facts, principles, methods or theories employed in arriving at the terms of this Stipulation, nor shall any Party be deemed to have agreed that any provision of the Stipulation is appropriate for resolving issues in any other proceeding."
[121] Docket UE-991832, 3rd Supp. Order at 25, ¶ 66.
[122] The Commission stated that if all of the new resources were disallowed, that would reduce the Company's rate request by about $6 million, while the settlement reduced the rate request by much more, some $14 million. *Docket UE-991832, 3rd Supp. Order at 24, ¶ 64.* Thus, the Commission's statements about whether or not the new resources were recovered under the settlement rates were unnecessary to the ultimate decision.
[123] Petition at 20, ¶ 32, citing Docket UE-991262.

that issue. Instead, the Commission ruled that the issue of the amount of rate credits would be decided in "the current pending rate filing,"[124] which was Docket UE-991832.

110 As we mentioned earlier, Docket UE-991832 was resolved by settlement, so nothing in that docket is precedential. In any event, the Stipulation approved in Docket UE-991832 simply noted that the parties agreed that a 15.4 percent share should be used to calculate Centralia sale credits.[125] That Stipulation does not state the basis for that percentage, nor did it require the Commission to determine the basis for that percentage. It was simply stated as a negotiated amount.

111 **Docket UE-032065.** The last case on PacifiCorp's list is yet another settlement: Docket UE-032065. Once again, PacifiCorp violates the terms of a settlement by citing that matter as precedent.[126] In any event, the Company is incorrect in saying the Protocol method was used to determine rates in that case.[127] In fact, the settling parties used the Protocol method only as "the only common basis upon which the settling parties could evaluate each others' proposed adjustments."[128] Using a common method to evaluate adjustments does not mean that method was the agreed basis for the resulting rates.

112 Indeed, as the Commission observed, the Settlement Agreement in that case resulted in a revenue deficiency $10 million lower than what PacifiCorp's direct case (based on Protocol) called for, and $7.5 million lower than what the Revised Protocol method would

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[124] *In re Application of PacifiCorp for Order Approving Sale,* Docket UE-991262, 2nd Supp. Order at 36, ¶¶ 109-110 (April 21, 2000).
[125] Docket UE-991832, Stipulation at 4, ¶ 4, footnote 4.
[126] The approved agreement states: "no party shall be deemed to have approved, admitted or consented to the facts, principles, methods or theories employed in arriving at the terms of the Settlement Agreement, nor shall any Party be deemed to have agreed that any provision of this Settlement Agreement is appropriate for resolving issues in any other proceeding." *Docket UE-032065, Settlement Agreement at 10, ¶14 e.*
[127] Petition at 20-21, ¶ 33.
[128] Docket UE-032065, Settlement Agreement at 3, ¶ 8a.

have produced..[129] Consequently, that docket cannot be read as a principled Commission determination that Protocol was an appropriate allocation method for rate setting purposes.

113 In sum, the history of PacifiCorp rate orders since 1986 shows that for the most part, the Commission set rates based using non-precedent-setting settlements. The Company may have been able to reach a settlement in the instant case, and maybe the Commission would have approved it. But that has not happened, and those prior settlements raised no legitimate expectation of future Commission rate action.

114 Indeed, the orders show PacifiCorp was well aware that it bore the responsibility and the risk of proving a valid cost allocation method, no more and no less.

E. The Commission Properly Denied Rate Relief Because PacifiCorp Failed To Sustain Its Burden of Proof

115 PacifiCorp argues that it was legal error for the Commission to apply the "used and useful" statute in such a way as to deny the Company rate relief.[130] According to the Company, the Commission is barred from doing so because the courts forbid a "formulaic, inflexible approach to ratemaking."[131] The Company posits that the Commission must consider the overall impact of rates, "no matter how they are determined."[132]

116 Assiduously avoiding the fact that PacifiCorp did not bear its burden to prove a rate increase in this case, the Company argues that the "used and useful" standard has been passed by, and the Order applying that standard "radically reversed" an "evolution" in utility ratemaking procedures.[133] As we discuss below, it is PacifiCorp's theory in this case that has been passed by.

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[129] Docket UE-032065, Order 06 at 21, ¶ 47.
[130] Petition at 11-14, ¶¶ 16-19.
[131] *Id.* at 12, ¶ 17.
[132] *Id.*
[133] *Id.* at 13, ¶ 17.

117 The first support the Company offers for its argument is a law review article nearly 20 years old.[134] Surprisingly, PacifiCorp fails to disclose the article's conclusions. The article concludes that apart from extreme cases of utilities in severe financial distress (such as the *Jersey Central* case, which is discussed momentarily), the "used and useful" principle "will endure," and "[t]he public should indeed pay for what it gets and get what it pays for."[135] In other words, this article supports the Order, not PacifiCorp.

118 Indeed, the law review article relied on by the Company was prescient: the "used and useful" standard has "endured," and it was properly applied by the Commission in this case to assure that Washington ratepayers only "pay for what they get and get what they pay for." Notably, PacifiCorp identifies no state that has "evolved" its ratemaking practices by repealing its statutory "used and useful" standard. Today, that standard is as central to the regulatory balance of investor and ratepayer interests as it has ever been.

119 The next support cited by the Company comes from a statement by the Michigan commission to the effect that "common sense" needs to be applied when construing the "used and useful" standard, in the absence of statutory or common law guidance.[136]

120 As we described earlier, the plain meaning of RCW 80.04.250 provides sufficient guidance in this case, and that guidance confirms the analysis in the Order. In any event, the additional guidance provided by the Michigan commission also supports the Order.

121 At issue in Michigan was whether a $286,000 facility should be included in rate base.[137] The commission decided it should be included, but only after finding that the facility "may be absolutely necessary to insure adequate generating capacity for [the utility]

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[134] *Id.* at 12, ¶ 17, footnote 11.
[135] James J. Hoecker, *Used and Useful: Autopsy of a Ratemaking Policy*, 8 Energy L.J. 303, 335 (1987).
[136] Petition at 12, ¶ 17, quoting *Ind. & Mich. Elec. Co.*, Case U-6148 at 45 (Mich. PUC, May 12, 1981).
[137] *Ind. & Mich. Elec. Co.*, Case U-6148 at 44.

under a variety of emergency situations."[138] In other words, the facility was necessary, capable and beneficial in directly serving the utility's customers.

122 By contrast, at issue here are huge investments PacifiCorp has made in facilities to serve customers in the Eastern Control Area, not Washington. These facilities cannot directly benefit Washington ratepayers due to severe transmission constraints on the Company's system. The Company has made no showing that these facilities provide indirect benefits to Washington customers commensurate with the value PacifiCorp wants to impute to its Washington rate base.

123 Finally, the Company tries to support its argument with what it calls a "leading case," *Jersey Central Power & Light Company v. Federal Energy Regulatory Commission ("Jersey Central").*[139] The facts of this case are crucial to the court's analysis, yet PacifiCorp does not discuss them.

124 The court in *Jersey Central* found a utility in severe financial distress due its $397 million investment in a nuclear power project. The utility abandoned that project, rendering its investment worthless.[140] The impact was profound: the utility "[lacked] access to long-term capital" and had only "precarious" access to short-term capital.[141] The utility's testimony before the FERC stated that the rate increase it requested was the minimum necessary to preserve its financial integrity.[142]

125 The utility in *Jersey Central* wanted to include the abandoned project in rate base and earn a return on it. This was inconsistent with a FERC policy that only "used and

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[138] *Id.* at 46. The Washington court conducted a similar analysis under RCW 80.04.250 to affirm the agency's exclusion from rate base of plant that was disconnected from the system and thus could not provide emergency service. *Winlock Water Co. v. Dep't of Pub. Works,* 180 Wash. 278, 281, 39 P.2d 603 (1934).
[139] 810 F.2d 1168 (D.C. Cir. 1987), discussed in the Petition at 13-14, ¶ 18.
[140] *Id.* at 1170.
[141] *Id.* at 1171.
[142] *Id.* at 1172.

useful" property should be included in rate base, and abandoned projects did not qualify. The court ruled that the FERC could not "elevate its used and useful principle to the status of an impregnable barrier..." and the FERC should have allowed the utility a hearing to prove what rates were necessary to preserve its financial integrity.[143]

126 Obviously, *Jersey Central* is distinguishable for many reasons. First, unlike the utility in *Jersey Central*, PacifiCorp is not on the brink of financial collapse, or otherwise in need of extraordinary rate relief sufficient to justify ignoring RCW 80.04.250. If it were, PacifiCorp could, should and would have sought interim rate relief, where the Commission focuses on the financial needs of the utility in times of severe financial crisis, similar to that facing the utility in *Jersey Central*.[144] Unlike *Jersey Central,* there is no record in this case for providing PacifiCorp such relief.

127 Second, there was no "used and useful" statute in *Jersey Central*. According to the court, for the FERC's purposes, "used and useful" was simply a "rule of thumb" that the FERC would readily modify as needed.[145] By contrast, in this case the "used and useful" standard is not merely a "rule of thumb," adaptable to any purpose. It is a statutory standard that has meaning, and PacifiCorp should have expected to satisfy that standard.[146]

128 Third, in *Jersey Central,* the court remanded the case to the FERC for a hearing.[147] Here, PacifiCorp has already had a full hearing, where the Company was given every opportunity to present and defend its "end result" claims.

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[143] *Id.* at 1187.

[144] *See, e.g., Wash. Utilities & Transp. Comm'n v. Pac. Nw. Bell Tel. Co.*, Cause U-72-30 tr, 2nd Supp. Order (October 10, 1972).

[145] *Id.*

[146] While the Commission may have discretion not to apply RCW 80.04.250 in an extraordinary case such as *Jersey Central*, this is not an extraordinary case.

[147] 810 F.2d at 1170.

129 Indeed, PacifiCorp knew before it filed this case that the Revised Protocol was not acceptable to Staff and other parties. It knew before filing its rebuttal evidence that Staff recommended dismissal as an option for the Commission. The Company's failure to take full advantage of the hearing opportunity the Commission provided does not justify a due process claim now.

130 Finally, unlike the FERC, and contrary to PacifiCorp's suggestion,[148] the Order never raised the "used and useful" statute as an "impregnable barrier." The Commission simply stated what makes common sense: if PacifiCorp wants to include in its Washington rate base as "used and useful" the projects it planned, bid, built and now operates to serve customers elsewhere, it needs to prove and quantify the benefits those projects provide to Washington ratepayers.

131 There is nothing "impregnable" about that, unless these projects provide no benefits to Washington ratepayers. Put another way, if there is any "barrier," it is that the Order assures that Washington customers are not burdened with the costs of facilities that benefit ratepayers in other jurisdictions. There is nothing unconstitutional about that. Nothing in *Jersey Central* holds otherwise.

132 In the end, it is PacifiCorp, not the Commission, who is "reversing the ratemaking process" by trying to create a new "used and useful" standard that eliminates the Commission's ability to determine the extent to which the Company's facilities provide service to Washington ratepayers.

133 The Company has a clear and proper recourse. It needs to develop an interstate cost allocation method that better allocates the costs of its facilities to the states that benefit from them, so that ratepayers in other states pay rates that fully cover those costs. If rates are too

[148] Petition at 14, ¶ 19.

low elsewhere because Revised Protocol allocates insufficient resource costs to those other states, the Company should solve that problem first, before claiming its Washington rates are somehow insufficient.

F. The Order Satisfies Due Process

134 PacifiCorp argues that the Order deprives the Company of due process because it violates the "end result" rule. The Company says it is entitled either to $8.25 million, $11.425 million, or some other, unspecified amount based on what PacifiCorp calls a $5.9 million "point of reference."[149]

135 The "end result" rule is the name given to the analysis a court undertakes to determine whether rates are confiscatory in violation of the Due Process Clause of the Fifth Amendment of the United States Constitution. *Duquesne Light Co. v. Barasch ("Duquesne").*[150] Under that test, the court looks to the "end result" of the order. Consequently, *Duquesne* reaffirmed that "it is not the theory but the impact of the rate order which controls. If the total effect of the order cannot be said to be unreasonable, judicial inquiry … is at an end."[151] The Court also noted that the rates should enable the utility "to operate successfully, to maintain its financial integrity, to attract capital, and to compensate investors for the risks assumed."[152]

136 To start with, PacifiCorp has a heavy burden to show a rate order is confiscatory. Because ratemaking is legislative in character,[153] it follows that PacifiCorp must prove that the Order is unconstitutional beyond a reasonable doubt.[154]

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[149] *Id.* at 14-19, ¶¶ 20-28.
[150] 488 U.S. 299, 307-08, 102 L. Ed. 2d 646, 109 S. Ct. 609 (1989).
[151] *Id.* at 310, quoting *Fed. Power Comm'n v. Hope Natural Gas Co.,* 320 U.S. 591, 602, 88 L. Ed. 333, 64 S. Ct. 281 (1944).
[152] *Id.*, quoting *Hope Natural Gas,* 320 U.S. at 605.
[153] *Indus. Customers of Nw. Utilities v. Wash. Utilities & Transp. Comm'n,* 128 Wn. App. 818, 832, 116 P.3d 1064 (2005).

137 As we explain below, the Order does not violate the Constitution. In any event, the Company cannot satisfy its heavy burden of proof because its calculations are inadequately supported.

1. The Constitution does not require the Commission to bear PacifiCorp's burden of proof, or to raise the Company's rates when the record does not justify it

138 The Company argues that the "end result" rule requires the Commission to give the Company some money.[155] This argument ignores the fact that rate setting requires an evaluation of the utility's costs of service. A multi-jurisdictional utility with significant common costs has the burden to provide an accurate allocation of those costs. Indeed, nowhere in its Petition does the Company even mention RCW 80.04.130(4), which places the burden of proof squarely and solely on the Company.[156]

139 No principle of due process requires that the Commission assume the utility's burden of proof, or make Washington ratepayers pay higher rates when the utility makes an insufficient case.

2. The Constitution does not require Washington ratepayers to pay for facilities that serve customers elsewhere

140 The "end result" rule is satisfied in this case. Indeed, the Commission recognized that the setting of rates is based on a balancing of ratepayer and utility interests.[157] That balance has been struck by RCW 80.04.250 and RCW 80.04.130(4): To include a facility in rate base, PacifiCorp has the burden of proof to show that the facility is beneficial and necessary to serve Washington customers, and the cost of the facility is commensurate with

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[154] *E.g., Kitsap Cy. v. Mattress Outlet,* 153 Wn.2d 506, 509, 104 P.3d 1280 (2005) (legislative enactment).
[155] Petition at 14-15, ¶¶ 20-22.
[156] RCW 80.04.130(4) states: "At any hearing involving any change in any schedule, classification, rule, or regulation the effect of which is to increase any rate, charge, rental, or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company."
[157] Order 04 at 26, ¶ 63.

those benefits.. Dismissal is the correct result because the Company failed to sustain that burden.

141 In this case, PacifiCorp chose to base its request for rate relief on a method that allocates costs to Washington that do not belong here (or at least PacifiCorp has failed to prove they belong here). The record provides some evidence of the magnitude of this problem. Despite explosive load growth in Utah and the Company's responsive addition of many new resources to serve that growth, the Company's rates in Utah today are eight percent lower than before the 1989 merger of Pacific Power & Light and Utah Power & Light, while the Company's Washington rates are 12 percent higher.[158]

142 The Company can and should go to its other jurisdictions and have ratepayers in those states pay rates that fully cover the costs of the facilities that serve them. There is nothing unconstitutional about that result.

3. PacifiCorp's earned return figures prove nothing. They are based on a flawed methodology and irrationally assume all of PacifiCorp's rate case adjustments are correct

143 The only "proof" the Company offers to show it cannot operate or finance successfully is its claim that it will earn either 3.490 percent or 2.804 percent on equity.[159]

144 Even if these figures were valid, they do not prove PacifiCorp cannot operate or finance successfully. In what PacifiCorp calls a "leading case," *Jersey Central, supra,* the court noted that a constitutionally valid range of rates is between the level of rates that "exploits" consumers and the level of rates that causes the utility deep financial hardship.[160] PacifiCorp offers no evidence proving the Company's current rates are outside that range.

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[158] Exh. 764, last page (as explained in the letter of the same date contained in that exhibit).
[159] Petition at 15, ¶ 21 (citations omitted).
[160] 810 F.2d at 1181.

145 Moreover, as we mentioned earlier, if existing rates are not permitting PacifiCorp to operate or finance successfully, the Company should have sought interim rate relief.

146 In any event, the earned return figures offered by PacifiCorp are not valid because they irrationally assume full implementation of allocation methods the Commission has not accepted, along with each and every other ratemaking adjustment proposed by PacifiCorp.[161] That is no way to sustain the heavy burden of proof cast upon the Company to prove its financial integrity is impaired.

147 Indeed, PacifiCorp cites no case for the proposition that the Constitution requires a regulatory commission to accept a utility's direct case in full in order to properly apply the "end result" rule. In *Duquesne,* the court noted that "at the margins" of the evaluation of whether a rate is confiscatory depends on the rate of return and "the amount of capital upon which the investors are entitled to earn that return."[162]

148 These are important factors in this case, yet PacifiCorp fails to address them. Instead, PacifiCorp simply uses return figures generated from unapproved or rejected allocation methods and other unaccepted adjustments.[163] The Company's approach is neither approved nor condoned by the Constitution, *Duquesne,* or any other case.

4. The Company's various revenue deficiency calculations do not reflect application of the "end result" rule

149 PacifiCorp complains that the Order fails to calculate its impact on the Company's financial health or access to capital.[164] However, as we explained above, PacifiCorp has the

[161] 3.490 percent: Exh. 193 at page 1.0, line 60; 2.804 percent: Exh. 193 at page 9.0, line 60 (Wrigley).
[162] 488 U.S. at 310.
[163] Indeed, if PacifiCorp is correct that filed results of operations are the proper basis for "end result" analysis, the Staff's filed results showed the Company was over-earning by $4.0 million at current rates (without double leverage), and ICNU's filed results showed the Company was over-earning by $22.2 million at current rates. *Staff Opening Brief, Table 6; ICNU Opening Brief, Table 6.* Both analyses show PacifiCorp's current rates are excessive.
[164] Petition at 12, ¶ 16.

burden of proof to show existing rates are confiscatory, and it has failed to sustain that burden. Nonetheless, in its Petition, PacifiCorp for the first time offers three ways to calculate the amount of money to which the Company thinks it is constitutionally entitled.

150 The first figure is $8.25 million, based on the average of each party's revenue requirements presentation (after making adjustments based on the Company's interpretation of how those adjustments were resolved by the Commission in its Order).[165] The second figure is another average, $11.425 million, based on further Company assumptions about how certain issues might have been resolved by the Commission.[166] The third figure is what the Company calls a "point of reference" of $5.9 million, based on a computed revenue deficiency allegedly associated with the net change in the Company's situs-assigned Washington distribution costs.[167]

151 The most obvious flaw in the Company's approach is that it fails to prove that any of these additional revenue amounts is the amount necessary for the Company to successfully operate and maintain its financial integrity. In other words, while the Company claims it is constitutionally entitled to some money, it offers no proof that $8.25 million, $11.425 million, or some other number based on a $5.9 million "point of reference," is or is not the amount required in order for PacifiCorp's rates to satisfy the constitutional standard the Company espouses.[168] Absent such proof, these numbers have no substance.

152 Moreover, the wide range of numbers proposed by PacifiCorp are "of little practical use" in this context, just like the wide range of cost of capital estimates in this docket.[169] As we demonstrate next, the Company's numbers are also inaccurate and arbitrary.

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[165] *Id.* at 17, Table 2 as described at 17, ¶ 24 of the Petition.
[166] *Id.*, as explained at 18, ¶ 25 of the Petition.
[167] *Id.* at 18, Table 3, as described at 18, ¶ 26 of the Petition.
[168] *Id.* at 19, ¶ 28.
[169] Order 04 at ¶ 260, page 93, footnote 384.

5. The Company's calculations are inappropriate for other reasons

153 The Company's numbers are inaccurate and arbitrary. It makes no sense that for a rate order to pass constitutional muster, the rates must be high enough to generate the average of the parties' revenue requirements presentations. PacifiCorp cites no case that has mandated or even suggested the Company's approach, or anything close to it.

154 The Company's approach is not only unprecedented, it also creates improper incentives. For example, if PacifiCorp is correct that the "end result" rule is satisfied by averaging the parties' revenue requirements presentations, utilities will have the incentive to propose exorbitantly high revenue deficiencies and other parties will have the incentive to do the opposite. The Company's numbers suffer several other problems, which we document below.

155 **Petition Table 3.** This table contains the Company's "point of reference" calculation of $5.9 million, based on the net change in the Company's Washington distribution costs. This calculation is flawed because it constitutes single issue ratemaking. PacifiCorp's "distribution plant cost of service" cannot justify a rate increase because it ignores other components of capital investment that contribute to the Company's overall return requirement.

156 Moreover, even assuming such a "distribution plant cost of service" was appropriate, the Company's calculation is erroneous. First, the Company measures only the increase in distribution investment and associated operating expenses. The Company should have also credited ratepayers with the associated increase in revenue.

157 Second, the revenue deficiency associated with distribution costs cannot be analyzed in a vacuum. Assuming the analysis is to be done at all, the Company should have

calculated the difference between the revenue deficiency associated with test period distribution costs, and the revenues current rates supply for recovery of distribution costs. PacifiCorp's Table 3 fails to do that.

158 **Petition Table 2.** In Table 2, PacifiCorp proposes to average all parties' revenue requirements presentations, after making several assumptions. This effort falls well short of meeting the Company's burden of proving an acceptable rate.

159 First, recall that the Company called Staff's allocation method "outrageous," and it called the allocation methods used by Public Counsel and ICNU "half-baked," "unworkable," and "wasting everyone's time."[170] While Staff disagrees with PacifiCorp, the Company should not be allowed to impeach its own case by using the results of Staff, Public Counsel and ICNU, just because it is in the Company's financial interest to do so.

160 Second, PacifiCorp is also wrong to use Public Counsel's presentation because as Public Counsel carefully explained, its presentation did not address all issues.[171] Consequently, Public Counsel's presentation must either be excluded, or the figures must be adjusted downward significantly. The Company's Table 2 does neither.

161 Third, Staff's presentation reflected in Company Table 2 used a form of a rejected cost allocation method: the Revised Protocol. Staff reluctantly used what it called an "Amended Revised Protocol" method on a one-time, "compromise" basis only, because the Company's method was so deficient. However, Staff conceded its method shared many of the same problems as the Revised Protocol,[172] as the Commission correctly observed.[173]

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[170] PacifiCorp Opening Brief at 13-15, ¶¶ 39-43.
[171] Public Counsel Opening Brief at 18, ¶ 38: "Public Counsel has not presented a comprehensive review of all revenue requirement issues, but does not take issue with adjustments presented by Staff or ICNU." Public Counsel's filed testimony was to the same effect. *Exh. 291T at 2:2-6 (Effron).*
[172] Exh. 541TC at 160:1-6 and at 161:17-19 (Buckley).
[173] Order 04 at 26, ¶ 61.

Thus, PacifiCorp's averaging of these results simply perpetuates the problem of using an inappropriate cost allocation method; it does not resolve that problem.

162 As to the details of the Table 2 "Staff" column, Staff could not replicate the Company's $13.5 million "Allocation Methodology" adjustment or the $5.4 million adjustment called "Estimated other O&M, Rate Base Adj." Staff believes both figures are substantially understated.

163 Staff also believes the Company's $1.2 million adjustment called "Incentive/Bonus" is too high by as much as $600,000, because the Order did not reject all adjustments to incentive pay. If the $400,000 adjustment called "Deferred Debits" is associated with the acquisition adjustments the Commission rejected, then Staff believes the amount should be $1.1 million.

164 In the end, no conclusions can be reached regarding Table 2. It is so riddled with errors and other problems that hearings would be required to sort them all out. Because the basis for Table 2 is flawed to begin with, further hearings would not be productive. In any event, the Company has not requested a hearing.

G. The Company's Commitments and Related Facts Justify the Commission's Analysis that the Company Knew It Was at Risk if It Failed to Produce an Acceptable Cost Allocation Method

165 PacifiCorp takes special exception to the Order's use of the Company's statement to the Oregon commission that "Pacific agrees, however, that its shareholders will assume all risks that may result from less than full system recovery if interdivisional allocation methods differ among the merged company's jurisdictions."[174] PacifiCorp suggests its failure to

[174] *In re Application of PacifiCorp and PC/UP&L Merging Corp. for an Order Authorizing the Merger of PacifiCorp and Utah Power & Light,* Oregon PUC Docket UF 4000, Order 88-767 at 6 (July 15, 1988).

sustain its burden of proof on cost allocations "has nothing to do" with its prior promises.[175] However, even assuming the Company's suggestion is accurate, the Company's prior promises and understandings have a role to play in this case.

166 The Commission was fully justified in referring to this Company promise to show the Company knew it was at risk that its allocation method might not be acceptable to all jurisdictions, and that the Company accepted that risk.[176] Indeed, the Company's own words belie its suggestion that its understanding of shareholder risk was limited to Oregon.[177] In the above quote, the Company clearly stated "its shareholders will assume *all risks*" (emphasis added), not just risks that pertain to Oregon.

167 The Company goes on to say it was never at risk to have its rate increase denied on the basis of an improper cost allocation method,[178] but the facts and law prove otherwise. For example, in 1988, at the time Pacific Power & Light elected to merge with Utah Power & Light, the Company was on notice that the Utah utility was a higher cost utility, and the merger posed great challenges for allocating costs between its jurisdictions.[179]

168 In 2001, PacifiCorp filed a "Joint Report" with Staff in which the prudence of the resources the Company had acquired since 1986. One conclusion was that while Staff could agree the resources were prudent from a system-wide perspective, Staff did not investigate whether these resources were beneficial and reasonable for Washington customers:

> Therefore, it is Staff's opinion that these resources could be subject to examination in a future rate case that will determine a fair, just and reasonable allocation of the cost burdens incurred since 1990 to Washington customers.[180]

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[175] Petition at 11, ¶ 15.
[176] Order 04 at 24, ¶ 56.
[177] Petition at 10, ¶ 13.
[178] *Id.* at 10, ¶ 14.
[179] *In re Application of PacifiCorp to Merge, Docket* U-87-1338-AT, 2nd Supp. Order at 14 (July 15, 1988).
[180] Exh. 338 at 4, last ¶ (page iii of the original pagination) (Duvall).

169 A short while later, "from the early stages" of the Multi-State Process,[181] the Company was made specifically aware that Staff opposed the "results driven" allocation methods the Company was developing. As Mr. Buckley summarized:

> Washington Staff has stood alone from the very beginning in this ... This type of [results-driven] analysis is simply not acceptable for determining what type of allocation methodology should be adopted or what features within an allocation methodology should be adopted.[182]

Unfazed by all this, the Company proceeded to develop and use the Revised Protocol anyway.

170 Staff also provided direct testimony in the instant case that the Commission should consider rejection of the Company's rate filing.[183] On rebuttal, instead of providing the Commission an alternative cost allocation method that did not suffer from the Revised Protocol's thoroughly documented deficiencies, the Company simply acknowledged Staff's testimony,[184] and chose to stick with the Revised Protocol method anyway.

171 PacifiCorp, like any regulated utility in this state, must surely understand that it has the burden of proving its proposed rates meet statutory standards.[185] It is fundamental that PacifiCorp prove the costs it incurs to serve Washington customers.

172 The facts clearly demonstrate that for the last 17 years, the Company has understood what was at stake.[186] The Company made its choices, including its choice to present the

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[181] Tr. 970:4-8 (Buckley, and acknowledged by Company counsel). According to Mr. Buckley, Staff was simply "drowned out by the volume of participants from other states." *Tr. 1028:1-2 (Buckley).* For further examples where Staff's concerns were not heeded, see Exh. 567.
[182] Tr. 968:4-8 (Buckley).
[183] Exh. 541TC at 11:11-13 (Buckley).
[184] Exh. 5T at 13:11-13 (MacRitchie).
[185] RCW 80.04.130(4).
[186] *See In re Application of PacifiCorp to Merge,* Docket U- 87-1338-AT, 2nd Supp. Order at 14. "Staff witness Folsom correctly points out the discrepancy in the average system cost between Pacific Power and Utah Power. The Commission continues to be concerned about the effects on Pacific's ratepayers of merging with a higher cost system, ..."

Revised Protocol method. The Company then chose to call alternative methods "half-baked," "unworkable," "wasting everyone's time" or "outrageous."[187]

173 Legal consequences flow from choices such as these. One consequence is the Commission's rejection of the Revised Protocol and the rates supported by it. On this record, no utility could be surprised if its rate request were rejected for failure to supply an appropriate cost allocation method, along with the other methods it so harshly criticized.

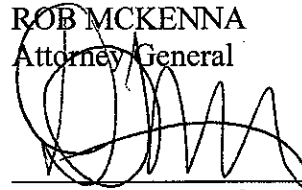
III. CONCLUSIONS

174 For the reasons stated above, the Commission should deny PacifiCorp's Petition for Reconsideration

DATED this 16th day of June, 2006.

Respectfully Submitted,

ROB MCKENNA
Attorney General



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[187] PacifiCorp Opening Brief at 13-15, ¶¶ 39-43.