BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re the Matter of the Application of	)	
	)	
AVISTA CORPORATION for Authority to Sell Its Interest in the Coal-Fired Centralia Power Plant	)	DOCKET NO. UE-991255
	)	
In re the Matter of the Application of	)	DOCKET NO. UE-991262
	)	
PACIFICORP for an Order Approving the Sale of its Interest in (1) the Centralia Steam Electric Generating Plant, (2) the Rate Based Portion of the Centralia Coal Mine, and (3) Related Facilities; for a Determination of the Amount of and the Proper Rate Making Treatment of the Gain Associated with the Sale, and for an EWG Determination	)	
	)	
In re the Matter of the Application of	)	DOCKET NO. UE-991409
	)	
PUGET SOUND ENERGY, INC. for (1) Approval of the Proposed Sale of PSE's Share of the Centralia Power Plant and Associated Transmission Facilities, and (2) Authorization to Amortize Gain over a Five-Year Period	)	FOURTH SUPPLEMENTAL ORDER
	)	
	)	ORDER GRANTING RECONSIDERATION IN PART; PROVIDING CLARIFICATION; DENYING PETITION TO REOPEN

I. SUMMARY

A. SYNOPSIS

1 The Commission grants reconsideration of its requirement that PacifiCorp hold harmless Avista, PSE, and their ratepayers from any future mine reclamation liability related to the Centralia coal mine. The Commission requires Avista, PSE, and PacifiCorp each to hold their own ratepayers harmless from any future mine reclamation liability. The Commission does not reconsider any other part of its Second Supplemental Order. The Commission explains, or clarifies, portions of the Second Supplemental Order that the parties did not understand. The Commission also corrects clerical errors in the Second Supplemental Order. The Commission denies Public Counsel's motion to reopen the proceeding.

B. PROCEEDINGS

2 On August 10, 1999, Avista Corporation ("Avista") filed with the Commission an application for authority to sell its interest in the coal-fired Centralia Power Plant to TECWA Power, Inc. ("TECWA"). This application was assigned Docket No. UE-991255. On October 14, 1999, the Commission entered an order approving, conditioned on a final order approving the sale, Exempt Wholesale Generator ("EWG") status for the purchaser.

3 On August 11, 1999, Pacific Power & Light Company ("PacifiCorp") filed with the Commission an application for authority to sell its interests in the Centralia Steam Electric Generating Plant, the rate-based portion of the Centralia Coal Mine, and related facilities to TECWA. This application was assigned Docket No. UE-991262. On October 14, 1999, the Commission entered an order approving, conditioned on a final order approving the sale, EWG status for the purchaser.

4 On September 10, 1999, Puget Sound Energy ("PSE") filed with the Commission an application for approval of the sale of PSE's interest in the Centralia Power Plant to TECWA Power, Inc. This application was assigned Docket No. UE-991409. On October 14, 1999, the Commission entered an order approving, conditioned on a final order approving the sale, EWG status for the purchaser.

5 A joint prehearing conference was held in these three proceedings in Olympia, Washington, on October 28, 1999, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner William R. Gillis, and Administrative Law Judge Marjorie R. Schaer.

6 On November 23, 1999, the Commission entered an order consolidating the applications of Avista, PacifiCorp and PSE. On November 29, 1999, the Commission entered a protective order in the consolidated proceedings.

7 The Commission held an evidentiary hearing on January 7, 10-11, 2000, for presentation of the Companies' cases, including rebuttal and cross-examination, and for presentation and cross-examination of Commission Staff, Public Counsel and Intervenors' cases.

8 On March 6, 2000, the Commission entered its Second Supplemental Order in Docket Nos. UE-991255, UE-991262 and UE-991409. The Commission authorized Avista, PacifiCorp, and PSE to sell their ownership interests in the Centralia facilities to TECWA. The Commission also authorized PacifiCorp to sell its interest in the Centralia Coal Mine to TECWA. The Commission required PacifiCorp to hold harmless its ratepayers, and Avista and PSE and their ratepayers from any future mine reclamation liability for the Centralia coal mine.

9 On March 14, 2000, the Commission entered its Third Supplemental Order, which

included the dissent of Commissioner Hemstad to portions of the Order.

10 Petitions for reconsideration or clarification of the Order were made by Avista, PacifiCorp, PSE, Commission Staff, and Public Counsel. The Commission called for answers to the petitions, and answers were filed by Avista, PacifiCorp, Industrial Customers of Northwest Utilities ("ICNU"), Commission Staff, and Public Counsel.

11 A motion to reopen the record in Docket No. UE-991255 was made by Public Counsel. The Commission called for answers to the motion, and answers were filed by Commission Staff, Avista, PacifiCorp and Local 612. Public Counsel filed an objection to the answer of PacifiCorp.

C. PARTIES

12 Gary A. Dahlke, Paine Hamblen, Coffin, Brooke & Miller, Spokane, represents Avista. George Galloway, Stoel Rives, Portland, represents PacifiCorp. Matthew R. Harris, Summit Law Group, represents PSE. We will refer collectively to Avista, PacifiCorp, and PSE as the "Companies" or "Applicants." Charles F. Adams and Simon ffitch, Assistant Attorneys General, Seattle, appear as Public Counsel. Robert D. Cedarbaum, Senior Counsel, Olympia, represents the Staff of the Washington Utilities and Transportation Commission ("Commission Staff"). Melinda J. Davison and S. Bradley Van Cleve, Duncan Weinberg Genzer and Pembroke, Portland, represent the Industrial Customers of Northwest Utilities ("ICNU"). Nancy Hirsh, Seattle, represents the Northwest Energy Coalition ("NWEC"). Robert Lavitt, Schwerin Campbell Barnard LLP, Seattle, represents the International Union of Operating Engineers, Local 612 ("Local 612"). John Bishop, Bennett, Hartman & Reynolds, Portland, represents the International Brotherhood of Electrical Workers, Local 125.

II. MEMORANDUM

A. BACKGROUND

13 The Centralia Generation Plant (“Centralia”) is a 1,340 MW coal-fired power plant located in Lewis County, Washington. Centralia entered service in 1972 and consists of two steam units. The primary source of coal for Centralia is a mine located adjacent to the power plant.

14 Centralia is owned by eight Northwest utilities in the following shares:

PacifiCorp	47.5%
Avista	15.0%
City of Seattle	8.0%
City of Tacoma	8.0%
Snohomish County PUD	8.0%
PSE	7.0%
Grays Harbor PUD	4.0%
Portland General Electric	2.5%[1]

15 Avista, PSE, and PacifiCorp propose to sell their respective shares of Centralia, including the associated transmission facilities and related property ("Centralia Facilities") to a subsidiary of TransAlta Corporation, which is a Canadian corporation located in Calgary, Alberta. These facilities have been included by the Commission in rate base for each company since Centralia began operation in 1972.

16 The proposed sale to TransAlta also includes the adjacent mine, which is currently owned entirely by PacifiCorp. Forty-seven and one-half percent of PacifiCorp's interest in the mine has also been included in rate base by the Commission.

17 The proceeds from the sale exceed the net book value of the assets resulting in a gain. The after-tax gain for each company is:

PacifiCorp	$82,663,000
Avista	$29,606,000
PSE	$13,520,000

These amounts are the estimates provided in the Companies' exhibits. They will be revised at closing based on actual plant balances, costs associated with the sale, and other variables.

18 The Commission authorized Avista, PacifiCorp, and PSE to sell their ownership interests in the Centralia facilities to TECWA. The Commission also authorized PacifiCorp to sell its interest in the Centralia Coal Mine to TECWA. Approval of PacifiCorp's sale was conditioned on PacifiCorp holding its ratepayers, and the other two Applicants and their ratepayers, harmless from any future liability for mine reclamation. Approval of PSE's sale was conditioned on PSE's deferral of the gain until its next general-rate request proceeding. PSE was required to accrue interest of 7.16 percent on the deferred balance.

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[1] Portland General Electric ("PGE") sold its share of the Centralia plant to Avista. The Commission approved Avista's petition to allow sale of the PGE share to TECWA in its Order, *Application of Avista Corporation to Sell the Share of the Centralia Plant it Purchased from PGE*, Docket No. UE-000080 (March 22, 2000).

19 Proceeds from the sale were allocated as follows: net book value to shareholders; remainder, up to original cost, to ratepayers; of the remainder (appreciation), one-half to shareholders and one-half to ratepayers; taxes to be paid by shareholders and ratepayers in proportion to taxable gain awarded. The Commission provided the following definition of what it meant by original cost: the cost of building the plant and all capitalized costs incurred from inception to the date of sale.

20 Timely petitions for reconsideration or clarification of the Order were made on March 15 and 16, 2000, by Avista, PacifiCorp, Commission Staff, and Public Counsel. PSE filed a petition on March 17, 2000. Also on March 17, PSE filed a Motion for Leave to Late-File Its Petition for Reconsideration. The Commission called for answers to the petitions for reconsideration or clarification, and answers were filed by Avista, PacifiCorp, ICNU, Commission Staff and Public Counsel.

21 On April 12, 2000, Public Counsel filed with the Commission a Motion to Reopen the Centralia Docket. The motion asks the Commission to admit certain evidence from Docket No. UE-991606 in this proceeding, and seeks to have two Avista witnesses recalled to testify on the information presented in Docket No. UE-991606. The Commission called for answers to the Motion to Reopen, and answers were filed by Commission Staff, Avista, PacifiCorp and Local 612. Public Counsel filed an objection to the response of PacifiCorp.

B. SHOULD THE COMMISSION CONSIDER PSE'S LATE-FILED PETITION?

22 The Order was entered on March 6, 2000, and petitions for reconsideration were due no later than March 16, 2000. PSE did not file its petition until March 17, 2000. Also on March 17, PSE filed a Motion for Leave to Late-file Its Petition for Reconsideration. PSE provided affidavits that establish that its petition was prepared on time, and that it had made arrangements with its messenger service that should have ensured that the petition was filed with the Commission on March 16, 2000. Because of mistakes by its messenger service, the messenger did not arrive at the Commission's offices until after they were closed for filing. PSE claims that the late filing was inadvertent, and that it did not learn of the late filing until after the Commission's offices had closed.

23 PSE argues that the Commission has the discretion under RCW 34.050.080 and WAC 480-09-135 to allow late filing of a petition for reconsideration. In addition, PSE argues that RCW 34.05.080 allows an agency to modify the time limits set forth in the Administrative Procedures Act ("APA") where the rights of persons dealing with the agency are not substantially impaired.

24 Commission Staff argues in its Answer to the petitions for reconsideration that the Commission should reject PSE's late-filed petition for reconsideration. Staff indicates that it has no reason to doubt PSE's explanation of the circumstances that resulted in the

petition being late. Staff also agrees that no party would be impaired by acceptance of the petition.

25 Commission Staff argues, however, that applicable statutes and rules prohibit the filing of a petition for reconsideration after the ten-day filing period established in WAC 480-09-810. First, Staff argues that the ten-day filing period derives from a specific statutory provision of the APA: RCW 34.05.470(1). Thus, Staff claims, the provisions of WAC 480-09-135(2) do not apply. Second, Staff argues that the Commission's discretion to lengthen or shorten the time frames stated in the APA can be exercised only in accordance with the provisions of RCW 34.05.080, which only allows time variations in four situations, none of which applies to PSE's petition. Third, Staff argues that rejection of PSE's late-filed petition is consistent with Commission precedent, citing *In re GTE Northwest, Inc.*, Docket No. U-89-3031-P, Third Supp. Order (August 1990) (petition filed one day late), and *In re Puget Sound Power & Light Company*, Docket No. UE-910689, Commission Letter Rejecting Petition (January 1992). Finally Staff argues that, since the 30-day appeal period does not commence until the Commission disposes of petitions for reconsideration, the Commission would be able to postpone indefinitely the period for seeking judicial review, if it allowed late-filed petitions. Staff argues that such a result is contrary not only to common sense, but also to provisions of the APA that establish definite, jurisdictional requirements for obtaining judicial review.

26 The Commission will reject a petition for reconsideration that is not timely filed.[2] Petitions filed a day late, with no previous request for extension, are rejected.[3] The Commission may, however, on its own motion, consider issues of public interest that are raised in a deficient petition for reconsideration.[4] The failure of PSE to file on time appears to be without fault or carelessness, and was quickly corrected. The Order affects the interests of all three Applicants, and it would be in the public interest to clarify the Order for the parties before they must file the actual numbers known only after the sale closes. The Commission will, on its own motion, consider the request for reconsideration, and the requests for clarification sought by PSE.

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[2] Order M. V. No. 147521, *In re Merrel Cline, d/b/a Courtesy Mobile Home Service*, App. No. P-77625 (February 1994). RCW 34.05.470; WAC 480-09-810.

[3] See, Order M. V. No. 138131, *In re Punctual Transportation, Inc.*, App. No. P-71023 (August 1988).

[4] Order M. V. No. 144941, *In re Rissler Contracting Company*, App. No. E-75297 (May 1992). See, Order M. V. No. 138131, *In re Punctual Transportation, Inc.*, App. No. P-71023 (August 1988).

C. SHOULD THE COMMISSION REOPEN THIS PROCEEDING?

27 On April 12, 2000, Public Counsel filed with the Commission a Motion to Reopen the Centralia Docket. The motion seeks the admission of evidence from Docket No. UE-991606 (Avista's pending general rate case) allegedly demonstrating that the sale of Centralia for Avista results in a need for increased rates of $4.1 million. Public Counsel claims that the evidence from Docket No. UE-991606 conflicts with evidence in Exhibit 332 in this docket, which shows an advantage of market over Centralia in the first ten years after the sale. Public Counsel also asks the Commission to recall Avista witnesses Mr. Ronald L. McKenzie and Mr. William G. Johnson to testify in this docket on the evidence they provided in Docket No. UE-991606.

28 Commission Staff has no objection to Public Counsel's motion. Staff notes, however, that the Commission stated repeatedly in the Order that the benefit of all of the forecasts of the market price for power was to inform the Commission of the uncertainty of the future, rather than to predict the future with precision. (Commission Staff's Answer, p. 2, citing the Order, paragraphs 43-45). Staff notes that although the evidence subject to Public Counsel's motion is as relevant as any other power-cost evidence already of record, "it is questionable whether that new evidence would require a different conclusion, under the framework of analysis employed by the Commission . . . " (Commission Staff's Answer, p. 2).

29 Avista opposes Public Counsel's Motion to Reopen the record. Avista argues that the information that produces an increase in revenue requirement in Docket No. UE-991606 is not new information, but was information clearly included in the record in this Docket in Exhibit C-194. Avista claims that Public Counsel's analysis ignores the immediate requirement for significant capital investment in pollution control equipment that would increase its investment in Centralia if the sale does not go through. Avista also notes that the gain associated with the sale of Centralia assigned by the Commission to Avista's customers offsets the near-term cost of replacement power, such that the net impact of the sale is a net decrease in costs to customers. Avista seeks to move forward with the Centralia sale without delay.

30 PacifiCorp also opposes the motion to reopen. PacifiCorp notes that the proposed sale can occur only when all of Centralia's plant owners have received regulatory approvals. PacifiCorp argues that any reopening of the record in respect to Avista will result in a delay of the case that might adversely affect PacifiCorp and its customers. PacifiCorp cites four reasons for opposing the motion. First, it does not believe that there is any difference in the evidence presented in this docket and the general rate case. Second, it argues that the comparison of costs made by Avista in this proceeding was between the costs of continued ownership of the Centralia plant, including the cost of the scrubber investment, and the cost of replacement power. Third, PacifiCorp supports the Commission's recognition that the sale of the Centralia Plant must be evaluated on its long-term impact on customers. Finally, PacifiCorp argues that the Commission

recognized that there is substantial uncertainty regarding the cost of replacement power, and that certain factors can be expected to regularly change based on current market conditions, and events at the plant.

31 Local 612 also opposes the motion to reopen, arguing that the motion is baseless. Local 612 argues that the appropriate forum to address the issues raised by Public Counsel is in Avista's rate proceeding, claiming that if the Commission concludes that a monetary adjustment is necessary, it can best make that adjustment in that rate case. Local 612 is concerned that reopening this case could jeopardize the jobs of several hundred employees at Centralia, and asks us to allow the sale approval to become final.

32 Finally, Public Counsel has filed an objection to PacifiCorp's response, claiming that Public Counsel filed its motion only in Docket No. UE-991255 and that PacifiCorp is not a party to Docket No. UE-991255. Public Counsel acknowledges that the Commission consolidated the three Centralia applications, but argues that since the companies did not petition to intervene in each other's proceedings, they were not joined as parties. Public Counsel cites no authority for its position on the meaning of consolidation in a Commission proceeding.

Commission Discussion

33 The Commission Staff correctly notes that the Commission did not rely on the forecast of future power costs as the determining factor in approving the Centralia sale. We would not expect any new evidence on the short-term cost of replacement power for the Centralia plants to change our finding that the Centralia sale is consistent with the public interest. The Commission also agrees with Avista and PacifiCorp that any comparison of Centralia costs to replacement power costs must include the scrubber investments that are necessary to keep the Centralia plant operating. We agree with Local 612 that if the Commission concludes that a monetary adjustment is necessary, it can best make that adjustment in Avista's rate case, and that the rate case is the proper forum for any further examination of Public Counsel's concerns. The Commission will not reopen this docket.

34 Finally, the Commission will not strike the answer of PacifiCorp. This is a consolidated proceeding, and any motion made in any of the dockets is considered as a motion in the consolidated docket. While the Applicants made a commitment to refrain from participation in certain accounting questions concerning each individually, there is no bar to the Applicants participating in portions of any of the three proceedings that affect their interests. PacifiCorp's answer makes clear that PacifiCorp's concerns about the motion to reopen were based on the effect that reopening could have on PacifiCorp and its customers. In a consolidated proceeding all parties are part of all portions of the proceeding.

D. ISSUES ON WHICH THE PARTIES HAVE PETITIONED FOR RECONSIDERATION

35 1. Should the Commission Require PacifiCorp to Indemnify Customers and Owning Utilities Against Future Mine Reclamation Costs?

36 2. Should the Commission Use the Depreciation Reserve Method for Allocating the Gain between Shareholders and Ratepayers?

37 3. Is the Order Precedential?

38 4. Should All Centralia Orders Issue Simultaneously?

39 5. Should PSE be Required to Defer Carrying Costs on the Ratepayer Portion of the Gain?

E. DISCUSSION AND DECISIONS ON RECONSIDERATION

40 A petition for reconsideration must demonstrate errors of law, or of facts not reasonably available to the petitioner at the time of entry of an order. A petition that cites no evidence that the Commission has not considered, and merely restates arguments the Commission thoroughly considered in its final order, states no basis for relief. RCW 34.05.470; WAC 480-09-810. A petition for reconsideration is not a second opportunity to litigate issues which were fully developed prior to entry of the final order and which were discussed and decided in the final order. The mere fact that a party disagrees with a final order does not state a basis for reconsideration.

41 The parties have identified five issues on which they seek reconsideration. The Commission will review each of these in the following sections.

1. Should the Commission Require PacifiCorp to Indemnify Customers and Owning Utilities Against Future Mine Reclamation Costs?

42 The Order examines all of the benefits and costs of the sale, including those that are quantitative and power-cost related, and those that are qualitative and not related to power cost. Risk associated with the cost of mine reclamation and closure was one of the factors in the evaluation of the balance among benefits, costs, and risks. The Commission found that the removal from customers of the risk associated with mine-reclamation or closure costs was an important benefit:

> [W]e are persuaded that clarifying responsibility for the costs of mine reclamation is also a meaningful benefit of the sale . . . Ratepayers and PacifiCorp are relieved of reclamation risk by the amount that the current reclamation accounts ... fall short of the actual reclamation cost. (Order, Paragraph 60).

43 The Commission observed, " . . . we note that PacifiCorp has indicated a willingness to indemnify its ratepayers (and, we assume, the ratepayers of the other owning utilities) from future reclamation costs..." (Order, Paragraph 62).

44 To ensure that the benefit would be realized, the Commission ordered:

> The Commission authorizes PacifiCorp to sell its interest in the Centralia Coal Mine to TECWA. Approval of the PacifiCorp sale is conditioned on PacifiCorp holding its ratepayers, and Avista and PSE and their ratepayers, harmless from any future liability for mine reclamation. (Order, Paragraph 157).

45 According to PacifiCorp, it made no offer in the record that it was willing to hold its ratepayers, or the other owning utilities, harmless in the event it became liable for future reclamation or mine closure costs. (PacifiCorp's Petition, p. 1). PacifiCorp's offer was, instead, to hold its ratepayers harmless for the cost of any environmental remediation required in the future, so long as the Commission approved its proposal to establish reserve accounts for this purpose, and so long as the Commission approved its benefit-sharing proposal. (Tr. 389).

46 PacifiCorp goes on to observe that it does not believe it faces any secondary liability under current law regarding mine reclamation or super-fund sites, should TECWA fail to fulfill its responsibility for mine reclamation and closure subsequent to the sale closing. (Tr. 387). It notes that it would only acquire a secondary liability if current law is changed. It also notes that should this occur and should it become liable for these costs, it has no current opinion about how or if it might seek recovery from ratepayers.

47 Finally, PacifiCorp points out that the owning utilities are bound by the Centralia Sellers Agreement (Ex. 206) to pay for any future reclamation costs that may occur because of TECWA default or changes in federal statutes. According to PacifiCorp, the requirement in the Second Supplemental Order that it indemnify the owning utilities from this eventuality is in contravention to this existing contract language. In view of these circumstances, PacifiCorp asks that the Commission "delete the condition associated with PacifiCorp holding its customers and other parties harmless in respect to Mine reclamation costs." (PacifiCorp's Petition, p. 2).

48 Commission Staff answers PacifiCorp's petition with three points. First, Staff agrees with PacifiCorp that the record does not contain evidence of any willingness on the part of PacifiCorp to cover future reclamation costs. PacifiCorp made such an offer regarding environmental remediation for the plant and mine, not for unfunded reclamation. The offer regarding environmental remediation was rejected. (Order, paragraph 68).

49 Second, Commission Staff notes that testimony which PacifiCorp alleges shows that Staff would support recovery of unfunded reclamation costs from customers is also about environmental remediation costs, not mine-reclamation costs. Rather Staff testified that recovery of any reclamation costs imposed on PacifiCorp after the sale closes would need to be examined based on the facts and circumstances at the time, should PacifiCorp seek to recover such costs from customers. (Tr. 513).

50 Third, Commission Staff does not read the Order to impose indemnification from future reclamation costs as a condition for the sale to be approved, but rather as an assumption the Commission made about PacifiCorp's intentions. (Order, Paragraph 62). Staff points out that PacifiCorp's objection to this component of the Order means that it does not intend to hold customers harmless for future reclamation costs, and, therefore, the Commission may need to revisit its conclusion that the removal of risk of future mine reclamation costs is, in fact, a benefit of the sale. (Commission Staff's Answer, p. 11) .

51 Public Counsel answers PacifiCorp's petition by echoing Commission Staff's third point. Public Counsel argues that the Company's objection to indemnifying customers (and the other utilities) from future mine reclamation risk is evidence that this risk is not actually removed, and, therefore, the Commission should reconsider the weight it attached to this benefit of the sale. Public Counsel argues that this evidence undercuts the reliability of the "qualitative" factors and that the Commission should disapprove the sale. (Public Counsel's Answer, p. 7).

52 Avista and PSE did not answer the portion of PacifiCorp's petition that objects to the requirement that PacifiCorp hold Avista and PSE and their ratepayers harmless from any future mine reclamation liability.

Commission Discussion

53 PacifiCorp and Commission Staff are correct. The record contains no explicit offer on the part of PacifiCorp to hold its customers harmless in the event of secondary liability associated with mine reclamation. In that respect, paragraph 62 of the Order is incorrect.

54 In examining this issue, however, PacifiCorp has brought to our attention a clause in the sellers' agreement that we had not previously considered. (Exhibit 206 § 10). PacifiCorp's contract with the other plant owners specifies that, if PacifiCorp incurs a secondary liability in respect to mine reclamation, each of the other owners is liable to PacifiCorp for its share of these costs should they materialize. It appears that this clause actually imposes new risk on the other sellers. In light of this contract provision, we will remove the condition that PacifiCorp indemnify the other plant owners from future reclamation costs in the event of secondary liability.

55 In their post hearing briefs PacifiCorp, PSE, and Avista all cited reduced liability for mine reclamation as one of the principal non-power related benefits of the sale. (Avista's Brief, p. 9; PacifiCorp's Brief, p. 2; PSE's Brief, p. 8). Both Commission Staff and Public Counsel are correct to point out that we cited this benefit to customers as a meaningful contribution to our finding that the sale is consistent with the public interest. (Order, Paragraph 60).

56 PacifiCorp has indicated that it does not believe it faces any secondary liability under current law regarding mine reclamation or super-fund sites, should TECWA fail to fulfill its responsibility for mine reclamation and closure subsequent to the sale closing. (Tr. 387). It noted that it would only acquire a secondary liability if current law is changed. Nonetheless, PacifiCorp executed Section 10 of the sellers' agreement, to share

any possible secondary liability with the other sellers. (Exhibit 206).

57 While the risk may be remote, PSE and Avista have agreed to take on a new potential responsibility in Section 10. This is a risk the shareholders may choose to incur, but it is not one that PSE's or Avista's ratepayers should ever incur, because it is a risk that relates to the mine, with which those ratepayers have no relationship. It would hardly make sense for those ratepayers to incur this risk just at the moment the mine is sold.

58 In light of the risk imposed by Section 10, the Commission requires that PSE and Avista indemnify and hold their customers harmless from future costs associated with mine closure or reclamation not covered by TECWA. (Order, Paragraph 62). This is a condition to our approval of the Centralia sale. If the sale goes through, we will deem that PSE and Avista have agreed to this condition.

59 The transfer of mine-reclamation liability from PacifiCorp to TECWA, and the sharing of its secondary liability, if any, to all of the sellers are clearly benefits to PacifiCorp from the sale. We will require PacifiCorp to share these benefits with its ratepayers by holding them harmless from any future mine-reclamation liability as a condition of the sale.

2. Should the Commission Use the Depreciation Reserve Method for Allocating the Gain between Shareholders and Ratepayers?

60 PacifiCorp asks the Commission to amend the Order by adopting the "depreciation reserve" method for allocating gain between customers and shareholders in lieu of the method set out in the Order. (PacifiCorp's Petition, p. 2). PacifiCorp represents that, if the Commission intended that some portion of the gain from sale of the Centralia Plant and Mine be shared with the Company's shareholders, the Order's proposed allocation method will not achieve that end. (PacifiCorp's Petition, p. 11). Next it argues that the Commission's sharing formula would not be appropriate, even if it accomplished the sharing sought, because it returns historic depreciation payments to ratepayers and appears to ignore the fact that customers effectively had the beneficial use of the Plant, "for which depreciation expense is appropriate compensation." *Id*. Finally, PacifiCorp claims that the only mechanism for accomplishing the equitable sharing of the gain between ratepayers and shareholders that has any basis in the record is the "depreciation reserve method" it sponsored.[5]

61 Commission Staff supports the Commission's decision regarding gain-sharing as a better method than the "depreciation reserve" method. Staff answers PacifiCorp's petition by pointing out that the Commission clearly intended that shareholders should receive 50 percent of the Appreciation gain, not 35 percent of the entire gain, which would result from using PacifiCorp's depreciation reserve method. Staff notes that the clarification of

[5] The reserve depreciation method is not the only "sharing method" with a basis in the record; Public Counsel proposed the basic framework for the method we adopted. (Tr. 746).

the Commission's formula requested by the parties will produce the sharing directed by the Order. Finally, Staff argues that the depreciation reserve method bears no resemblance to the Commission's formula and should be rejected.

62 ICNU answers PacifiCorp's petition with the argument that application of PacifiCorp's mechanism would result in excessive shareholder returns, and would deprive ratepayers of the value of assets for which they have paid. Moreover, ICNU argues that PacifiCorp has provided no reason for the Commission to reconsider its decision to reject the depreciation reserve method and adopt a method based on the principles that risk follows reward and benefit follows burden.

Commission Discussion

63 The Order specifies a formula for allocating the proceeds each Applicant receives from the sale. Shareholders are to receive net book value. (Order, Paragraph 81). Ratepayers are to receive an amount equal to accumulated depreciation. (Order, Paragraph 82). Ratepayers and Shareholders are to receive equal shares of the Appreciation Gain. (Order, Paragraph 83). The sharing of the Appreciation Gain was deemed to be fair "[n]ot based on a preconceived formula, but on the equities of this distinctive case." (Order, Paragraph 86). Taxes are to be apportioned between Shareholders and Ratepayers according to the share of taxable gain apportioned to each. (Order, Paragraph 151).

64 The Order examines the "depreciation reserve method" sponsored by PacifiCorp and rejects it as not consistent with the public interest. (Order, Paragraph 143). Section F. should make clear that the specified formula results in PacifiCorp's shareholders receiving the portion of the gain we have judged to be fair and just: that is, 50 percent of the Appreciation gain.

65 The rest of PacifiCorp's argument regarding the "depreciation reserve" method cites no evidence that the Commission has not previously considered, and merely restates arguments that the Commission addressed in its final order. A petition for reconsideration is not a second opportunity to litigate issues which were fully developed prior to entry of the final order and decided in the final order. A petition for reconsideration that does not state an error of law or fact in the challenged order, nor state any other basis for granting reconsideration should be denied.[6] The Commission will not reconsider the gain allocation.

3. Is the Order Precedential?

66 The Order discusses the principles that apply in reviewing property transfer applications

[6] RCW 34.05.470; WAC 480-09-810. *WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U S WEST Communications*, Docket No. U-89-2698-F, Order Denying Reconsideration (September 1991).

under RCW 80.01.040 and under our rule**,** and the distinctive circumstances presented by this case. With respect to the standard of review, the Order states:

> These principles are not minimum standards; rather they are guidelines that, when taken together, can be used to determine whether there is, at least, no harm to the public interest . . . Over time, and across different industries and transactions, different considerations may prove relevant to determining the public interest." (Order, Paragraph 29).

With respect to the accounting treatment specified, the Order states, "If presented with a different asset sale that presents different circumstances, opportunities, risks and benefits, we would not necessarily conclude that such a sharing of the gain is appropriate" (Order, Paragraph 97).

67 Avista points out that the Commission has, throughout the Order, qualified its findings and requirements to the circumstances of the instant case. It represents that, "[i]f Avista decides to proceed with the sale to TECWA, [it] would do so only if such order is deemed to be non-precedential." (Avista's Petition, p. 2).

68 PSE also points out that the Order discusses the need for regulators to be flexible enough to allow managers of regulated utilities to exercise sound judgment. (PSE's petition, p. 7). PSE asserts that, "Some of the concepts discussed by the Commission in reaching its conclusion are novel and raise potentially troubling issues if applied in other contexts." (Id.). PSE does not identify which concepts cause it concern. The Company requests that the Commission, "[c]larify in its Order...that the rationale and methodologies used in rendering its decision are specific to the Centralia situation; i.e., the allocation methodology and accounting treatment set forth in the Order do not have any precedential effect on other asset sales." (Id., pp. 7-8).

69 Commission Staff responds that the Commission has adequately conditioned its decision on the facts and circumstances of this proposed asset sale and that no further discussion of the precedential impact of its Order is required or warranted.

Commission Discussion

70 Neither PSE nor Avista states exactly what they wish us to reconsider and change in the Order. We agree with Staff. The Order is clear in its discussion of the distinctive circumstances of the proposed sale of Centralia. While the facts and circumstances surrounding Centralia determined our application of principles concerning risks and rewards, and benefits and burdens in the instant case, we do not believe that these concepts are novel and would expect to apply them, as they may be relevant, to the facts and circumstances presented by any other proposed asset sales. Every order we issue is both distinctive in its facts and nonetheless instructive for the future. Any determination of how principles applied in this case might apply to a future situation must await a

future date.

4. Should All Centralia Orders Issue Simultaneously?

71 The Second Supplemental Order was entered on March 6, 2000. That Order approves Avista's sale to TECWA, with conditions, of a 15 percent share in the Centralia Power Plant. The Order notes that Avista has acquired an additional 2.5 percent ownership share in the Plant through purchase from Portland General Electric. (Order, Paragraph 115). Avista applied on January 24, 2000, for approval of sale to TECWA for this 2.5 percent ownership share and the matter was taken up by the Commission under Docket No. UE-000080. The Commission issued its Order in Docket No. UE-000080 approving the sale and distribution of the gain for Avista's additional 2.5 percent ownership share on March 22, 2000.

72 Avista argues that, in order for it to have all necessary information in hand to make its decision whether to proceed with closing the sale to TECWA, it needs to know the Commission's decisions with respect to both its 15 percent and its 2.5 percent shares of ownership. It argues that it may have insufficient time to decide whether to seek appeal of the Order, if it must wait to see the disposition of its application in UE-000080. It requests that the Commission address concurrently the treatment of the gain for both the original 15 percent share and the 2.5 percent shares of the Plant.

73 Commission Staff opposes Avista's request for reconsideration and points out that the Commission has now issued its March 22, 2000, order approving the sale to TECWA of the 2.5 percent share. According to Staff, the Company now has all the information it needs to make its decision regarding closure of the sale. Moreover, Staff points out that the Commission's Order is not final until disposition of petitions for reconsideration are final and, therefore, the full 30 days to consider appeal begins with the issuance of the Order on reconsideration petitions, not the issuance of the Second Supplemental Order.

Commission Discussion

74 We agree with Commission Staff. Orders approving the sale with conditions have been issued both for Avista's 15 percent and 2.5 percent ownership shares. Avista has the information in hand that it needs to make decisions concerning closure of the sale or appeal of our orders.[7]

5. Should PSE be Required to Defer Carrying Costs on the Ratepayer Portion of the Gain?

[7] We also note that our Order Clarifying Order Approving Sale and Distribution of Gain in Docket No. UE-000080 is being entered contemporaneously with this order.

75 Approval for PSE to sell its share of the Plant is granted by the Order with the condition that "PSE must defer the gain from the sale until its next general rate increase proceeding. It must defer the gain with a return of 7.16%." (Order, Paragraph 154).

76 PSE requests that the Commission reconsider the carrying cost requirement imposed in the Order (PSE's Petition, p. 4). It argues that to impose such a requirement outside of a general rate proceeding ignores "[a]ll the other capital investments which PSE has undertaken to meet its obligations to serve customers." It goes on to argue that it has invested some $595 million in capital additions between 1997 and 1999. According to PSE, to accept that it "owes" its customers money because of an adjustment in a single portion of its rate base (Centralia) does not recognize additional investment for which it has not requested rate base adjustments. PSE argues that if the Commission is concerned that PSE may use the ratepayer portion of the gain to invest in non-utility purposes, it can impose a condition that PSE be required to re-invest the gain from the Centralia Plant sale in utility rate base allocable to PSE's customers.

77 PSE represents that the required carrying costs amount to a one-million dollar annual current charge against PSE's income for financial reporting purposes. This, PSE argues, is a significant disincentive for PSE to proceed with the sale, and this disincentive arises not from the economics of the sale, but rather from the accounting treatment the Commission has ordered. Finally, PSE argues that, if it is required to meet the carrying charge condition, shareholders will be made materially worse off because they will also face near-term replacement power costs that are higher than the cost of power from Centralia. According to PSE, this outcome does not fulfill the statement that the Order represents "[a]n allocation that strikes a fair balance between ratepayers and shareholders."

78 Commission Staff responds to PSE's request by arguing that the Commission should reaffirm its requirement that PSE defer the ratepayer portion of the gain with carrying costs. It notes that this is the same condition imposed in *Colstrip* (Docket No. UE-991627) and that PSE did not petition for reconsideration on this issue in that case. Staff continues with what it argues are three critical flaws in PSE's argument. First, that PSE's reference to $595 Million of new capital investment represents evidence that is not included in the record in this case. Second, that PSE's apparent assumption that all of that investment is prudent and reasonable has no basis in this record. And, finally that:

> [T]he Rate Plan now governing PSE includes programmed revenue increases for five years to accommodate increases in PSE's costs and investments over that period. The company agreed to operate in such an environment. Its request that ratepayers, in essence, give PSE an interest-free loan rewrites the Rate Plan . . . (Commission Staff's Petition, p. 6).

79 Commission Staff argues that the Commission should reject PSE's request, or in the alternative, order the company to file a proposal to refund immediately to ratepayers their portion of the gain.

80 Public Counsel answers PSE's petition by recommending it be rejected. Public Counsel labels as "merely a red herring" the Company's argument that it has made substantial investments and not sought their inclusion in rate base. (Public Counsel's Response, p. 5). "The Company fully expects to recover prudent investments at the time of its next rate case, and benefits from regulatory lag when it makes cost saving decisions." (*Id*.). Public Counsel responds to PSE's argument to separate the economics of the sale from the accounting treatment by citing the Commission's statement "[w]e can now determine whether the proposed sale, taken together with the accounting treatment we have directed, is in the public interest." (Order, Paragraph 95). Public Counsel offers that, in order for the ratepayers to realize the full value of their share of the gains, PSE must either accrue interest on the deferred amount at 7.16%, or it must immediately refund to customers their share of the proceeds from the sale. Finally, Public Counsel notes that the Company is in control of its fate regarding near-term power costs. If it does not wish to incur these costs, it should choose not to sell.

81 ICNU also opposes PSE's request by recommending that the Commission reject the petition and reaffirm that PSE is required to accumulate carrying cost on the ratepayers' share of the gains. It argues that, if PSE indeed faces higher power costs during the Rate Plan as a result of the sale of Centralia, is a consequence of its decision and should not be made a ratepayer responsibility. It argues further that PSE should not be permitted to use the ratepayers' share of the gain to fund unspecified rate base investments.

Commission Discussion

82 As noted in the Order in paragraph 22, Commission Staff asked the Commission to find that PSE's customers' share of the gain should be deferred and earn a return until its next general rate proceeding. In Order aragraphs105, we discussed Commission Staff's arguments in favor of deferring the gain, and PSE's arguments against such a sharing.

83 In support of its petition, PSE makes factual allegations that are not a part of the record, and repeats arguments it already made, and the Commission already rejected, in the Order. The Commission will not consider new evidence that is presented for the first time on petition for reconsideration without a motion for rehearing. The proper place for the introduction of new evidence is at hearing.[8] PSE's first two arguments are based on alleged facts that are not in the record, and will not be considered.

84 PSE's third argument is that if it is required to meet the carrying charge condition, shareholders will be made materially worse off because they will face near-term replacement power costs that are higher than the cost of power from Centralia, and because the required carrying cost represents a charge to current revenues. The replacement power cost issue was discussed in paragraphs 99 through 101 of the Order.

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[8] RCW 34.05.470; WAC 480-09-810. *WUTC v. Puget Sound Power & Light Company*, Docket Nos. UE-921262, UE-920499, UE-920433, Fifteenth Supplemental Order (December 1993).

PSE's argument about near-term power costs is unpersuasive. We did not find the analysis and projections of near-term power costs in this record to demonstrate persuasively that costs would be either higher or lower than power costs from Centralia. PSE must consider its own view of that situation when it makes its final decision about whether to sell the plant.

85 With respect to the effect the required carrying charge may have on current revenue, we point to paragraph 104 of the Order. The company has itself requested and received approval from the Commission to defer costs, including a capitalized return of eight percent, associated with achieving fuel supply savings for two of its purchased-power contracts.[9] It is inconsistent for PSE to argue that the time-value of shareholder money should be captured when costs are deferred, but that the time-value of ratepayer money should not be captured when ratepayer funds are deferred.

86 We do not grant PSE's request for reconsideration and removal of the carrying charge required for the gain apportioned to customers. We affirm that customers should receive the time-value of this money while they await its inclusion in rate calculations. PSE must provide to customers the full value — principal and time-value — of the gain allocated to customers by the accounting treatment we have specified. To accomplish this, we affirm our condition that PSE defer the customer portion of the gain along with accumulated interest at 7.16%.

[9] See, *Petition of Puget Sound Energy*, Docket No. UE-991918, Order Approving Accounting Treatment (December 29, 1999)

F. ISSUES ON WHICH THE PARTIES HAVE PETITIONED FOR CLARIFICATION

87 On reconsideration, the Commission may correct errors in a final order. The Commission will also explain, or "clarify" portions of an order to assist the parties in implementing its requirements. In this matter, the Commission considered and decided issues involving three different companies. Each company presented its accounting data in a slightly different manner. PacifiCorp presented combined figures for both the Centralia mine and power plant in its exhibits. And as noted in paragraph 17 of the Order, the figures in the Companies' exhibits are only estimates; the final figures will not be known until the sale closes. Paragraph 66 of the Order requires the Companies to file updated, known amounts with the Commission when they are available.

88 In the Order, the Commission provided several illustrative exhibits, derived from numbers in the company exhibits, to present a composite picture of the three Companies' data. These calculations, based on estimates, were not represented as the final outcome of this matter. The questions asked in seeking clarification show that in large part the Companies had no problem determining the sources of the numbers. Answers to many of the questions just require that we confirm that the Companies have, in fact, found the right number, or the right sources of a calculated number. In other cases, individual Companies have shown alternative methods of making a calculation; to clarify, the Commission need only tell "Party X" to look at how "Party Y" solved the problem, and to follow "Party Y's" method. In the following sections, the Commission will seek to clarify the portions of the Order which have confused the parties.

1. Treatment of Taxes

89 Various parties have sought clarification regarding how the Companies should treat the taxes that will be due in other states as a result of the sale of Centralia sale. Avista provides electric service in two states, owns electricity generating facilities in a third, and sells natural gas in two others. PacifiCorp provides energy services in many Western states. Some of these states impose state income taxes, and will tax the gain on the Centralia sale. The Commission in its estimates of taxes in the Order used a tax rate of 35 percent. Public Counsel interprets this number as a conclusion by the Commission that no "other state" taxes should be included in the allocation of the sale proceeds, and asks us to indicate that Washington ratepayers will not be liable for taxes imposed by other states. Commission Staff expresses concern that the Order did not address "other state" taxes. Staff believes that some state taxes may appropriately be allocated to Washington ratepayers. (Commission Staff's Answer, p. 13). PacifiCorp and Avista, in their answers, disagree with Public Counsel's position that Washington ratepayers should not be held liable for "other state" taxes.

Commission Discussion

90 The Order used an estimate of taxes based on the federal tax rate to illustrate the tax consequences of the sale. It did not seek to address other states' taxes, because the record is not well developed on that issue. Both Avista and PacifiCorp are currently before the Commission in rate request proceedings. After the sale closes, and final numbers are known, Avista and PacifiCorp should present their detailed implementation proposals regarding other states' taxes. The Commission will be able to determine in that forum the proper amount of other states' taxes to include in Washington rate calculations. The Commission expects any other states' taxes allocated to Washington ratepayers to be allocated between shareholders and ratepayers in the manner it has shown for Federal taxes.

2. Treatment of Transaction Costs

91 Commission Staff asks us to clarify how transaction costs from the sale should be allocated. Staff recommends that the ratepayers and shareholders share equally the responsibility for the transaction costs.

92 Public Counsel argues that transaction costs are fundamentally related to the selling of the plant, and should be treated as a cost of the sale. Public Counsel would deduct the transaction costs from the net proceeds, reducing any gain before it is apportioned between ratepayers and shareholders. Public Counsel opposes the methodology proposed by PSE.

93 Avista has provided an Attachment A to its petition, in which it makes the calculations necessary to implement the Order, and asks the Commission to determine if its figures are correct, or to provide better information if something is not done as the Commission instructed.

94 PSE provides an example of how it believes transaction costs should be allocated in Attachment 1 to its petition. PSE asks us to provide an example of how transaction costs should be treated if its example is not correct.

95 ICNU disagrees with Commission Staff and Avista. In its answer to the petitions it asks the Commission to require the Companies to bear all of the transaction costs, arguing that it is the utilities who have decided voluntarily to sell the plant and who have retained investment bankers, consultants, and others to execute this complex transaction. ICNU notes that there has been no demonstration that the transaction costs are prudent.

Commission Discussion

96 The transaction costs should be deducted from the proceeds before calculating the pre-tax gain. The methods proposed by Commission Staff, Public Counsel, and Avista to account for transaction costs appear to be equivalent, and are the appropriate method. The Commission disagrees with ICNU that the Companies should bear all of the transaction costs. The Commission also disagrees with PSE's approach to allocate the transaction costs in the same percentage as the gain. Attachment 1 to PSE's petition is not correct in this regard. The Commission's methodology is consistent with normal and customary accounting procedure. The calculation supplied by Avista on Attachment A to its petition demonstrates the correct methodology for recording transaction costs.

3. Examples of Application of the Commission's Methodology for Calculating and Sharing the Gain

97 Avista seeks clarification concerning calculation of the gain. Specifically, it asks the Commission either to approve the calculations provided in Attachment A of its petition for reconsideration, or to provide an example of a correct calculation. PSE also seeks clarification of the gain calculation. It asks the Commission either to approve the calculations provided in Attachment 1 of its petition for reconsideration, or to provide the Commission's own calculations.

98 Commission Staff in its answer agrees with both Avista and PSE that the calculation methodology needs clarification.

99 The Commission has analyzed the Attachments provided by Avista and PSE. Both efforts demonstrate that Avista and PSE understand the intent of the Order. The Commission is aware that after closing, the final numbers will change. Only two points need further explanation.

100 First, the only difference between Avista's and PSE's calculations is the treatment of transaction costs. As noted in paragraph 96 of this order, Avista's method is the appropriate method. Second, the Commission has not approved the tax rate used in the calculations. As discussed in paragraph 90 of this order**,** any issues regarding other states' taxes will be handled in the pending rate filings of Avista and PacifiCorp.

4. Excess Deferred Taxes

101 The Order requires that Avista, PacifiCorp, and PSE each seek a ruling from the Internal Revenue Service (IRS) allowing pass-through of excess deferred taxes as part of the gain from the sale of the Centralia Plant and Mine. (Order Paragraphs 166, 167, 168).

102 Public Counsel argues that the utilities feel little incentive to secure such a ruling from

the IRS since, in the absence of a positive ruling, the excess deferred taxes would not be applied for the benefit of the ratepayers. Instead the excess deferred tax balance would be retained by the utilities. (Public Counsel's Petition, p. 2). Public Counsel argues that the Commission has not imposed any sanction on the Companies should they fail to succeed in their efforts to obtain these rulings. Public Counsel asks the Commission to clarify what sanction or sharing mechanism will be used to reward the Companies if their efforts are successful, or to penalize them if they are not. It proposes that a portion of the gain assigned to shareholders be conditioned on securing a successful ruling. (Public Counsel's Petition, p. 3).

103 Commission Staff agrees with Public Counsel "that there is an incentive for the Companies to fail before the IRS." (Commission Staff Answer, p. 14). Staff recommends that the excess deferred taxes be split evenly between the ratepayers and the shareholders if the Companies are successful. If the Companies are unsuccessful, Staff recommends that an amount equal to one-half of the excess deferred taxes be removed from the gain allocated to shareholders.

104 ICNU answers Public Counsel's petition with the statement that "ICNU supports the imposition of more stringent requirements on the utilities to ensure proper treatment of excess deferred taxes." (ICNU's Answer p. 4).

105 Avista responds that both Public Counsel's proposal and the requirement imposed by the Order directing Avista to seek an IRS ruling regarding excess deferred taxes are not necessary. Avista proposes that it be permitted to apply all deferred taxes, including excess deferred taxes, to the ratepayer portion of the gain. According to Avista, obtaining an IRS ruling will be costly and time consuming. It offers that a more effective approach "would be to reverse the excess deferred taxes, to the benefit of ratepayers in the gain calculation, and wait to see if the IRS takes exception to the handling of deferred taxes on audit." (Avista's Petition, p. 4). Avista states that it ". . . does not believe that excess deferred taxes would be an issue with an IRS auditor, since, in effect, from the seller's point of view the depreciable life of Centralia ends when the plant is sold." (*Id*.).

106 PacifiCorp responds that it intends to seek the required IRS ruling in good faith. It indicates that it must state the facts underlying its request and the existence of an incentive or sanction would, according to PacifiCorp, need to be revealed. According to PacifiCorp, the existence of a ". . . sanction or incentive mechanism might be deemed to represent an improper means of accomplishing indirectly a 'flow-through' of benefits that is improper if done directly." (PacifiCorp's Answer, p. 3).

Commission Discussion

107 We are not persuaded that the Companies would fail to make a legitimate effort to obtain a positive IRS ruling. Therefore, we will not construct or impose a reward/sanction mechanism concerning the disposition of excess deferred taxes. We also view the option proposed by Avista as an equally acceptable alternative. The Companies will be allowed to choose either Avista's option (which includes Avista's willingness to shoulder the consequences of an adverse audit) or to seek a private letter ruling from the IRS.

5. Source of Numerical References Sought by PacifiCorp

108 PacifiCorp has requested clarification concerning what it finds to be "mysterious numbers and calculations" in the Order. (PacifiCorp's Petition, p. 1). Since the actual numbers will change, the tables in the order were intended to show the approximate amount and relationships of the allocations we ordered. Avista and PSE grasped the concept with no apparent problem. As noted in paragraph 96 of this order, the Avista calculation in its Attachment A provides an example of the appropriate methodology for the gain calculation and appreciation sharing. PacifiCorp will find answers to many of its questions by studying that example.

109 It may be more efficient to briefly address PacifiCorp's questions and supply the calculation showing the allocated gain using Avista's methodology. After we show the allocated gain, in order to clearly demonstrate the final outcome, we have provided the figures for return of shareholders' basis and allocated proceeds. Since the calculation in the following table uses numbers from PacifiCorp's exhibits, it is a close approximation of what the company may expect upon sale. Also, the references in the table should clarify the source of the numbers in the Order.

PacifiCorp - Gain calculation using the Avista method					Ratepayers	Share-holders
Sale Proceeds (paragraph 111 of this order)	199.4					
less: transaction costs (Exh. 207, page 1, line 21)	- 4.2					
Net Proceeds	195.2	195.2				
less: Original Cost (paragraph 112 of this order)		-179.2	179.2			
Appreciation		16.0		16.0	8.0	8.0
Book Basis-Plant (paragraph 113 of this order)			- 56.6			
Book Gain			122.6	+122.6	+122.6	
Total Gain on Sale of Plant**				138.6		
Allocated Gain - Before Federal Income Tax					130.6	8.0
Basis returned to shareholders						+56.6
Allocation of sale proceeds	195.2				130.6	64.6
PacifiCorp Washington Allocation 15.4%					20.11	9.94
Federal Income Tax @ 35%*					7.04	3.48
After Tax Allocated Proceeds					**13.07**	**6.46**
*Tax rate may change provided other state taxes, if any, be appropriately charged to Washington ratepayers						
**Reconciliation						
Gain recorded by PacifiCorp.(Ex. 207, page 1, line 43)	142.0					
Embedded Mine Gain Ex. 207, page 2, line 17)	- 3.4					
Gain on Sale of Plant	138.6					

110 In the following sections we will briefly address each of PacifiCorps' questions.

a. Allocated Sales Proceeds

111 PacifiCorp seeks verification that the $199.4 million figure shown as PacifiCorp Allocated Sales Proceeds in Table 2 (Order p. 23) is derived from Exhibit 207, by subtracting the $64.2 million of net plant shown on line 16 "Cash to PacifiCorp for Mine" from line 20, "Net Cash From Sale." Yes, this is correct.

	Exhibit 207, line 20	$306,677,384
less:	Exhibit 207, line 16	107,196,463
		$199,480,921

b. Accumulated Depreciation

112 PacifiCorp indicates that it is unable to verify the $122.6 million amount listed in Table 2 as "Accumulated Depreciation." The amount labeled "Accumulated Depreciation" actually contains more than just accumulated depreciation from plant assets. The amounts added together to reach the $122.6 figure include:

Exhibit 214, Gross Plant		$179.2	
less:	Net Plant	64.2	
equals:	Accumulated Depreciation	$ 115.0	115.0
plus	Exhibit 207, page 1, line 21, Transaction Costs		4.2
plus	Exhibit 207, page 2, line 17, Gain on Mine Sale		3.4
Shown as Accumulated Depreciation in Table 2			$122.6

It would have been more appropriate to have separated the Transactions Costs and Gain on Mine Sale into separate line items.

c. Net Book Value

113 PacifiCorp first describes how it appears that the Commission calculated the figure labeled in Table 2 as "Net BookValue." PacifiCorp asks if this number is the result of subtracting line 15 of page 2 of Exhibit 207 from line 41 of that table. Yes, this is correct.

	Line 41	$160,407,784
minus	Line 15	103,788,571
		$ 56,619,213

The result of this calculation would better be labeled "book basis." "Book basis" is also the appropriate figure to use in Table 2 in the place of "Net Book Value."

114 PacifiCorp also argues that the calculation described in paragraph 113 above, is not a

proper derivation of the shareholder's net book value of the plant for these purposes. PacifiCorp claims that the Commission has underestimated net book value by the $25.3 million reclamation fund balance. The table above uses the cash proceeds and basis numbers from PacifiCorp's Exhibits 207 and 214. The reclamation balance was removed from the total cash price and basis amount following PacifiCorp's methodology in Exhibit 207. The Commission treated the reclamation fund balance in the same manner that PacifiCorp used in its Exhibit 207; the Commission did not alter PacifiCorp's gain calculation methodology in any way except to identify and share the appreciation component of the gain.

115 PacifiCorp complains that there is no explanation of what is included in the category "Other Costs and Adjustments" in Table 3. (Order, p. 24). PacifiCorp complains that there is no explanation of what is included in the category "Other Costs and Adjustments" in Table 3. (Order, p. 24). The PacifiCorp number on Table 3, labeled "Other Costs and Adjustments," is a reconciling number to match the gain shown on Exhibit 207 in the amount of $142 million. The problem is the $142 million gain includes the gain on the mine. The table above separates the mine gain from the plant gain and eliminates any discrepancy.

116 We clarified in paragraph 96 of this Order that transaction costs are correctly removed from sales proceeds before the gain calculation. PacifiCorp's Exhibit 207, page 1, line 21, correctly removes these costs from sales proceeds.

d. Tables 2, 3, and 5

117 To assist PacifiCorp in understanding tables 2, 3, and 5, we refer them to the above table which shows the gain calculation using the Avista methodology for PacifiCorp.

6. Allocated Sale Proceeds Should Match Original Cost

118 The Commission Staff asks the Commission to clearly state that sale proceeds must match the corresponding cost element those proceeds were designed to cover. Staff is concerned that if this matching is not done, appreciation amounts may be overstated. Such a mismatch, Staff argues, would improperly inflate the amount of gain to be allocated to shareholders, without a commensurate benefit for ratepayers. Staff points out that the fuel and material inventory cost was not included in Table 2, for PSE, in the row labeled "Original Cost."

119 Although the Order, in Table 2, did not include the fuel and material inventory cost for PSE, the company appears to agree with the Commission Staff that it should have been included. PSE has correctly included the fuel and material inventory cost in its Petition Attachment 1.

120 PacifiCorp, however, objects to Commission Staff's recommendation that all elements of proceeds and costs be matched. PacifiCorp argues that such matching "is unworkable

because the sale of the Plant and Mine were not structured in that fashion." (PacifiCorp;s Answer, p. 2)

121 The Commission acknowledges that fuel and material inventory cost was inadvertently omitted from the number in Table 2 for PSE. We commend PSE for including that amount in the calculations shown in its Petition Attachment 1. We are puzzled by PacifiCorp's objection; its gain calculation in Exhibit 207 correctly records fuel and material inventory cost in sales proceeds and basis calculations.

7. Avista's Motion For Correction of Order

122 Avista expresses concern that Table 5 at page 31 of the Order contains numbers in its "Allocation of Sale Proceeds" that, when added together, are greater than 100 percent of the net-of-tax gain allocated to Washington. Table 5, however, is a representation of the allocation of sale proceeds, not of allocation of net-of-tax gain.

123 To illustrate the difference, the following table compares the numbers in Table 5 with Avista's Attachment A of its Petition for Reconsideration.

		Attachment A	Table 5
	Attachment A line references		
Accumulated Depreciation	line 24 (26.9*.65)**	17.50	17.50
Total Appreciation	line 23 (7.04*.65)**	4.57	
	Ratepayers (4.57/2)	2.29	2.29
	Shareholders (4.57/2)	2.29	2.29

**0.65 is the reciprocal of the 35% Federal tax rate.

8. PSE Is Not Required to Defer The Shareholder's Portion of The Gain

124 PSE requests that the Commission clarify that "PSE is not required to defer its allocated share of the gain." (PSE's Petition, p. 3).

125 Commission Staff responds that it has no objection to this clarification, so long as ratepayers are treated with equal fairness. According to Staff, shareholders will receive the full value of their portion of the gain without loss of any time-value. Staff argues

that, for ratepayers to receive similar treatment, the Commission must affirm its decision that if the ratepayers' portion of the gain is deferred (and not immediately returned to ratepayers), it must accrue carrying costs of 7.16 percent.

Commission Discussion

126 The portion of the gain allocated to shareholders can be realized by PSE at the time final accounting is complete, filed, and accepted by the Commission after closure of the sale. We have already noted that the ratepayers are entitled to the time-value of their share of the gain. (Paragraph 86 of this order).

9. Does the Order Impose on PSE a Requirement to File a Rate Case?

127 PSE requests clarification from the Commission that the Order does not impose a requirement on PSE to file a general rate case by a specified date.

128 Commission Staff answers that the Order does not include any such requirement and that the genesis of PSE's request for clarification appears to have been a statement in a Commission press release, which appears to be based on a condition in *Colstrip* that PSE be required to file by a certain date. The Staff brief in this matter had asked the Commission to impose a similar requirement.

Commission Discussion

129 The Order does not impose on PSE any requirement or date for filing a general rate case.

G. CLERICAL ERRORS

130 The Commission on reconsideration may correct a Commission error in a final order. The following typographical or clerical errors should be corrected as indicated below.

131 In paragraph 66 of the Order, the reference to "paragraph 106" should be changed to "paragraph 105."

132 In paragraph 144 of the Order, the phrase "amortize the sale" should be changed to "amortize the gain."

133 In Table 5, the "Ratepayer Total" amount for PacifiCorp shown as "13.29" should be changed to "12.89."

134 In paragraph 155, the word "Colstrip" should be changed to "Centralia."

III. ORDER

135 The Commission grants and denies the petitions for reconsideration and clarification as fully described in the text of this Order. The Commission denies the motion to reopen this proceeding.

DATED at Olympia, Washington, and effective this day of April, 2000.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner