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Decision 99-06-049 June 10, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PacifiCorp (U 901-E) and Scottish Power plc for Exemption from the Merger Approval Requirements of California Public Utilities Code Section 854.	Application 99-01-036 (Filed January 26, 1999)

OPINION

PacifiCorp and Scottish Power plc (ScottishPower) (jointly, the Applicants) request an exemption from the approval requirements of Pub. Util. Code § 854 [1] for the merger of an indirect, wholly owned subsidiary of ScottishPower with and into PacifiCorp and ScottishPower's subsequent exercise of control over PacifiCorp (the Application). This Application is made pursuant to § 853(b). The Office of Ratepayer Advocates (ORA) protested on the ground that Applicants had failed to meet their burden of demonstrating that the proposed merger was in the public interest. After meetings between Applicants and ORA, Applicants filed testimony, which has been admitted into evidence, which met ORA's concerns. Thereupon, ORA withdrew its protest. There are no other protests. A summary of Applicants' statements and commitments which address ORA's concerns is attached as Appendix A. The Application is granted and the merger may take effect once various conditions are satisfied and all required regulatory approvals are obtained.

[1] All statutory cites are to the Pub. Util. Code, unless otherwise noted.

Jurisdiction

Section 854(a) states:

> "No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission. .... Any merger, acquisition, or control without that prior authorization shall be void and of no effect."

PacifiCorp is a public utility doing business in the state of California, but it asserts it is not "organized" in the state of California. PacifiCorp states it is organized in the state of Oregon and conducts an electric utility business in the states of Oregon, Idaho, Utah, Washington, and Wyoming, as well as the state of California. Pursuant to the second paragraph of § 704, PacifiCorp is permitted to conduct a public utility business in the state of California. Because PacifiCorp believes it is not "organized" in the state of California, and is not required to be so organized, it claims § 854(a) does not apply to this transaction.

Sections 854(b) and 854(c) require extensive findings, which are not required under § 854(a), if any of the utilities that are parties to § 854(a) transaction has gross annual California revenues exceeding $500 million. Applicants assert §§ 854(b) and 854(c) do not apply to this transaction for the reason stated above and because PacifiCorp's gross annual California revenues are less than $500 million, and ScottishPower does not have any California revenues.

Notwithstanding this contention, to avoid controversy and facilitate the prompt closing of the transaction, Applicants request an exemption from the provisions of § 854 for this transaction. Section 853(b) authorizes the

Commission to grant such an exemption if it finds that the application of § 854 "is not necessary in the public interest."[2]

ScottishPower is a public limited company registered in Scotland.

Applicants assert this transaction is a simple change in the ownership and control of PacifiCorp. It is not a consolidation of operating utilities and thus, avoids the associated regulatory complexities of such a transaction. The transaction is subject to the approval of at least four other state utility regulatory commissions. PacifiCorp's Northern California service territory constitutes a very small portion of PacifiCorp's retail electric operations, and the issues associated with the transaction do not vary materially from one state to another. No change in operations will result from the transaction, no transfer of assets or certificates of public convenience and necessity is involved, and the transaction will not have any adverse effects on competition.

Pursuant to the Agreement and Plan of Merger between ScottishPower and PacifiCorp, dated as of December 6, 1998 (the Agreement), upon the closing of the transaction, an indirect, wholly owned subsidiary of ScottishPower (Merger Sub) will merge with and into PacifiCorp, with PacifiCorp continuing in existence as the surviving corporation. A copy of the Agreement is attached as Appendix 2 to the Application.

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[2] 853(b) The commission may from time to time by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if it finds that the application thereof with respect to the public utility or class of public utility is not necessary in the public interest. The commission may establish rules or impose requirements deemed necessary to protect the interest of the customers or subscribers of the public utility or class of public utility exempted under this subdivision. These rules or requirements may include, but are not limited to, notification of a proposed sale or transfer of assets or stock and provision for refunds or credits to customers or subscribers.

Article II of the Agreement provides for the outstanding common shares of PacifiCorp to be converted into the right to receive, at the option of the holders of such shares, either newly issued ordinary shares of ScottishPower or newly issued ordinary shares of ScottishPower represented by American Depository Shares of ScottishPower and evidenced by American Depository Receipts. This article describes a mechanism for Scottish Power's payment of cash for fractional shares of PacifiCorp. The proposed transaction contemplates no additional borrowings by ScottishPower.

As described in Article II, as of the closing of the transaction, the outstanding shares of Merger Sub will be cancelled and PacifiCorp will issue to an entity indirectly and wholly owned by ScottishPower an equal number of shares with the same rights, powers, and privileges as the canceled Merger Sub common stock. As a result of this transaction, ScottishPower will acquire indirect ownership and control of all of the voting capital stock of PacifiCorp.

Applicants argue that the application of § 854 to the proposed transaction is not necessary in the public interest for the following reasons:

1. The transaction only involves a change in ownership of PacifiCorp. It does not involve a consolidation of operating utilities, a change in utility tariffs, or a sale or transfer of utility property or certificates of public convenience and necessity.
2. The transaction is subject to the approval of the utility regulatory commissions in the states of Idaho, Oregon, Utah, and Wyoming, as to either the change of control of PacifiCorp (Oregon and Wyoming) or the issuance of securities in connection with the change of control (Idaho and Utah). In either case, the effects of the transaction on the public interest will be examined in these other jurisdictions. In addition, an application has been filed with the Washington utility regulatory commission for a determination that the transaction does not require that commission's approval or, in the alternative, for approval.
3. PacifiCorp provides electric service to 41,273 retail customers in its California service territory, which represents only 3.3% of its retail customers system-wide and 2% of its retail electricity sales system-wide.

Any benefit of the Commission's review of the transaction, in addition to the reviews being conducted by PacifiCorp's other states, would likely not be significant, while the burden of a full § 854 proceeding on the Applicants would be significant.

4. Sections 704 and 854 by their terms do not contemplate that Commission approval is necessary to protect the public interest in the case of a multi-state utility that is subject to regulatory supervision in another state jurisdiction, and where no other California statute (such as statutes governing the transfer of utility property or certificates of public convenience and necessity, or the adoption or amendment of tariffs) applies.
5. The transaction does not contemplate any change in the operation of PacifiCorp's California properties, other than possible efficiency improvements or the introduction of new services that would be subject to the Commission's ongoing jurisdiction.
6. The transaction does not contemplate the sale of any of PacifiCorp's generation, transmission, or distribution assets.
7. ScottishPower does not currently own or operate any public utility properties in the United States and does not currently participate in any energy or energy-related markets in the U.S., either directly or indirectly. Thus, the transaction cannot adversely affect competition in the state of California or elsewhere in the U.S.
8. Separately, PacifiCorp is in the process of selling its California distribution system assets. If the sale is completed, as the Applicants expect, the Commission's resources would be better applied to the review of the sale and its effects on PacifiCorp's customers. A sale of PacifiCorp's California service territory would moot the public interest issues associated with this transaction.
9. The Applicants agree to the Commission's adoption of the terms set forth in Appendix 3 to the Application as conditions to this exemption, for the purpose of preserving the jurisdiction of the Commission and the Commission's capacity to effectively regulate and audit PacifiCorp's public utility operations in California, as well as PacifiCorp's relationship to ScottishPower and its affiliates.

Background of ScottishPower

Applicants state that ScottishPower was incorporated in Scotland in 1989. ScottishPower is a multi-utility business in the United Kingdom (U.K.), with approximately 5 million customers in three distinct geographic areas across Scotland, England, and Wales. ScottishPower's activities span electricity generation, transmission, distribution and supply, water and waste water services, gas supply, telecommunications, retailing of electrical appliance, and technology and contracting services. ScottishPower and its subsidiaries comprise one of the largest industrial groups in the U.K.

ScottishPower and its predecessors have provided electric service to the public for over 100 years. Prior to 1991, ScottishPower was a U.K. government-owned utility. In June 1991, ScottishPower was privatized by the U.K. government and its common shares were offered to the public. It has grown from a Scottish regional generator, distributor, and supplier of electricity into a multi-utility business. This is due in large part to the acquisition in 1995 of Manweb plc, one of the 12 regional electricity companies created when the electric utility industry in England and Wales was restructured in 1990, and its acquisition in 1996 of Southern Water plc, one of the 10 large water and waste water service companies created when the water and waste water industry in England and Wales was privatized in 1989. Both of these acquisitions have allowed ScottishPower to increase its customer base, geographic diversification, and product base.

The U.K. electric industry was restructured in March 1990 to introduce competition. The final part of this process, including the residential electricity supply market, began to open to full competition in September 1998 and is scheduled to be complete by June 1999. In addition to Manweb and Southern Water, ScottishPower's businesses include Generation Wholesale, Power Systems, Energy Supply, ScottishTelecom, and other related businesses.

Applicants assert that the transaction examined here will not adversely affect PacifiCorp's ability to serve the public; it will, in fact, benefit PacifiCorp's customers. The Commission will continue to exercise its regulatory authority over PacifiCorp, thereby ensuring continued protection of the interests of customers. ScottishPower does not have other operations in the U.S.; consequently, this transaction does not present the potential for cost shifting, revenue loss or diminution of energy supplier competition. The Commission's continued regulatory oversight further ensures that there are no significant risks or potential harms to PacifiCorp's customers resulting from the transaction.

It is through the performance of PacifiCorp that the public interest will be advanced, in Applicants' opinion. They contend the combination of PacifiCorp and ScottishPower will result in:

- A financially stronger company than PacifiCorp standing alone;
- High-quality customer service;
- Continued commitment to the community;
- A high level of environmental stewardship;
- Maintenance of the Pacific Power/Utah Power identities; and
- A continuing commitment to the welfare of employees.

A. Financial Strength

Applicants state that the transaction will enable PacifiCorp to become part of a large, financially strong corporate group and will permit it to obtain needed capital on favorable terms. Measured by market capitalization of over $12 billion, ScottishPower is among the 25 largest investor-owned electric utilities in the world. For its fiscal year ended March 31, 1998, it had assets of approximately $9 billion, shareholder equity of approximately $2.75 billion and annual revenues of approximately $5 billion. Access to U.S. debt markets will be maintained and ScottishPower will provide access to U.K. and European debt markets.

Financial reports for ScottishPower are included in Appendix 4 to the Application.

B. Customer Service

Applicants assert that the combination of PacifiCorp's and ScottishPower's capabilities in this area will provide benefits to current and future customers, thus enhancing the public interest.

ScottishPower's qualifications and experiences include:

- Extensive world-wide benchmarking exercises to achieve the goal of best-in-class performance;
- Investments in customer service systems and call centers;
- High rankings by industry regulators for quality of service and low levels of customer complaints; and
- Tailored energy packages.

Applicants stress that ScottishPower's Standards of Service encompass a variety of areas, the object of which is to enhance performance within the business and increase customer satisfaction. The guaranteed standards include performance measurement relating to: restoring power supply because of fault or damage, investigating voltage complaints, providing supply and meter, making and keeping appointments, and responding to customer inquiries about charges and payments.

They claim that both ScottishPower and Manweb have achieved steady and substantial improvements in service as measured by reductions in the area of "guaranteed standards failures" since privatization. They note that among the tailored energy options offered to enhance customer satisfaction are ScottishPower's "Green Energy" tariff and energy saving packages. ScottishPower expects to continue those efforts and develop service quality standards that will measure the performance of the organization in a variety of key service areas. These ScottishPower experiences will combine with PacifiCorp's existing efforts to achieve a high level of customer satisfaction.

C. Service to the Community

Applicants believe that the value of the transaction to the local community will be manifested in a variety of ways. ScottishPower's publicly stated values include a commitment to earn the trust and respect of communities in which the company operates. ScottishPower expects to expand these efforts into the U.S. context and combine them with existing PacifiCorp initiatives, where appropriate. Following the closing of the transaction, ScottishPower will add $5 million to the PacifiCorp Foundation, increasing the total endowment to approximately $45 million.

D. Commitment to the Environment

ScottishPower asserts that it will maintain PacifiCorp's existing environmentally friendly efforts. ScottishPower claims an extensive commitment to the development of renewable resources as evidenced by its investment in wind power facilities in the U.K., where it is one of the largest operators of wind generation. Applicants maintain that research will continue to play an important role.

E. Maintenance of PacifiCorp Identity

ScottishPower's business and regulatory goals for PacifiCorp are closely linked. There will be no transfer of operations to ScottishPower, recognizing the importance of maintaining the identities of both Pacific Power and Utah Power. Local management of operations and attention to local concerns are essential to the long-term success of the combined organization.

F. Partnership With Employees

ScottishPower considers its employees to be key stakeholders in the company's future success. ScottishPower cites its Open Learning facility as supporting personal development across the group. In addition, ScottishPower has won awards in recognition of its commitment to and high levels of staff training. ScottishPower explains that its experience in employee relations extends to labor unions. The Partnership Council in the company's generation business, composed of senior management members and trade union representatives, focuses on policy formation and performance monitoring. ScottishPower believe this collaborative process has assisted in advancing the goals of both parties. ScottishPower maintains that safety is of paramount importance to the company, and has introduced several initiatives to encourage best practices. ScottishPower intends to honor all existing labor agreements and work to maintain and expand constructive relationships with labor unions representing PacifiCorp's employees, including safety and training initiatives.

G. Summary of Public Interest Considerations

Applicants contend that, overall, the transaction will consolidate the best practices of both ScottishPower and PacifiCorp, sharpen the focus on local distribution services, and enable PacifiCorp to provide a higher level of service.

Applicants declare that PacifiCorp will operate in a way that achieves the twin objectives of providing high-quality customer service and fair rates of return to shareholders. To accomplish these objectives, ScottishPower intends to maintain continuity in the operation of PacifiCorp, while emphasizing steps for improvement. The Pacific Power/Utah Power identities will be maintained. ScottishPower has no other operations in the U.S. and it has no intention to consolidate any of PacifiCorp's existing business operations with any of its own business operations. The U.S. headquarters of ScottishPower will be located in Portland, Oregon and the PacifiCorp headquarters will be maintained there. A strong local presence will remain as a necessary component of ScottishPower's longer-term objective to play an active role in the economic prosperity of the PacifiCorp service territory.

ScottishPower emphasizes its commitment to PacifiCorp's intention to focus on its core-regulated operations. Except for the already announced sale of the California distribution system assets and the Centralia generating station, along with the associated facilities, ScottishPower does not anticipate any additional sales of the physical assets that currently support the PacifiCorp U.S. regulated utility business.

Other Information Regarding the Transaction

A. Capital Structure

A description of PacifiCorp's projected capital structure as of December 31, 1998 is set forth in Appendix 5 to the Application. After the transaction, PacifiCorp will continue to have its own long- and short-term debt, unless there are benefits to be gained from the use of other forms of capital.

As long as it is subject to traditional cost-of-service regulation, PacifiCorp will continue to propose for ratemaking purposes that its capital structure and return on common equity be based upon those of comparable electric utilities.

B. Issuance of Securities

As described above and in Article II of the Agreement, as of the closing of the transaction PacifiCorp will issue shares of its common stock to an entity indirectly and wholly owned by ScottishPower. Applicants maintain that Commission approval is not required for this issuance of PacifiCorp common stock, pursuant to D.88-04-062 (28 CPUC2d at 92.)

C. Bond Ratings

It appears that this transaction has already had a beneficial effect on PacifiCorp's bond ratings. Prior to the announcement of the transaction, PacifiCorp's senior secured debt was rated "A+" by Standard & Poor's, "A2" by Moody's and "A" by Duff & Phelps. As of December 9, 1998 (post announcement), Moody's had changed its ratings outlook from negative to stable, S&P had moved PacifiCorp from CreditWatch-Negative to Positive, while Duff & Phelps had kept it on RatingWatch Uncertain. Specific PacifiCorp ratings are currently under review by the agencies, and are expected to be updated in the near term.

D. Organization Structure

A list of ScottishPower's principal operating subsidiaries is contained in the ScottishPower Annual Report attached as Appendix 4 to the Application, at page 62.

PacifiCorp will be retained as a separate corporate entity. A diagram of the organizational structure that is expected to result from the transaction is set forth in Appendix 6 to the Application.

E. Asset Dispositions

ScottishPower has no plans to sell, exchange, pledge or otherwise transfer any of PacifiCorp's physical assets which support PacifiCorp's U.S. regulated business, except for the potential sales of the California distribution system assets and the Centralia generating station and associated facilities.

F. Filings with Federal Agencies

Securities and Exchange Commission (SEC) approval of the transaction is not required. Following consummation of the transaction, however, ScottishPower will register as a holding company in accordance with Section 5 of the Public Utility Holding Company Act of 1935. ScottishPower would then be regulated to the same extent as other U.S. based registered holding companies with respect to the issuance of securities, acquisition and disposition of securities and assets, and diversification into businesses related to the utility business and the regulation of affiliate transactions. ScottishPower will file a Form F-4 Registration Statement with the SEC. PacifiCorp will also file a proxy statement for use in its shareholder meeting where approval of the proposed transaction is sought.

PacifiCorp will seek approval of the Federal Energy Regulatory Commission (FERC), pursuant to Section 203 of the Federal Power Act, for the proposed transaction. PacifiCorp will request this approval on the basis that it will result in the indirect transfer to ScottishPower of control of the "jurisdictional facilities" of PacifiCorp and its power marketing affiliates.

ScottishPower and PacifiCorp will both make filings pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act). The proposed transaction cannot be consummated until the waiting periods prescribed in the HSR Act lapse.

As a non-operating owner of the Trojan nuclear power plant, which is in the later stages of decommissioning, PacifiCorp must notify the Nuclear Regulatory Commission (NRC) of a change in control of the licensee. PacifiCorp must assure the NRC that all safety-related matters remain under the supervision of U.S. citizens.

G. Request for Waiver of Specific Filing Requirements

Applicants request that the Commission waive other filing requirements set forth in Rules 17 (Financial Statements) and 36 of our Rules of Practice and Procedure, if such filing requirements are deemed applicable to this Application. PacifiCorp suggests that the filing of PacifiCorp and ScottishPower financial statements should provide sufficient information for purposes of processing this Application. This Application is not, in fact, a "merger" application; rather, the relief sought through this filing is an exemption from the requirements of PU Code § 854. In addition, PacifiCorp contends that because PacifiCorp will survive the proposed transaction as an indirect, wholly owned subsidiary of ScottishPower, requirements such as a "pro forma balance sheet giving effect" (Rule 36(c)) to the merger are unnecessary.

H. Discussion

Pursuant to § 853(b), we exempt Applicants from the provisions of § 854. The application of § 854 is not necessary in the public interest for the following reasons:

1. This transaction involves a change in ownership of PacifiCorp. It does not involve a consolidation of operating utilities, a change in utility tariffs, or a sale or transfer of utility property or certificates of public convenience and necessity.

2. The transaction is subject to the approval of the utility regulatory commissions in the states of Idaho, Oregon, Utah, and Wyoming. The effects of the transaction on the public interest will be examined in these other jurisdictions.

3. PacifiCorp provides electric service to 41,273 retail customers in its California service territory, which represents only 3.3% of its retail customers system-wide and 2% of its retail electricity sales system-wide. Any benefit of this Commission's review of the transaction, in addition to the reviews being conducted by PacifiCorp's other states, would likely not be significant, while the burden of a full Section 854 proceeding on the Applicants would be significant.

4. The transaction does not contemplate the sale of any of PacifiCorp's generation, transmission, or distribution assets.

5. ScottishPower does not currently own or operate any public utility properties in the United States and does not currently participate in any energy or energy-related markets in the U.S., either directly or indirectly.

6. Separately, PacifiCorp is in the process of selling its California distribution system assets. If the sale is completed, as the Applicants expect, the Commission's resources would be better applied to the review of the sale and its effects on PacifiCorp's

customers. A sale of PacifiCorp's California service territory would moot the public interest issues associated with this transaction.

7. The Applicants agree to the Commission's adoption of the terms set forth in Appendix 3 to the Application as conditions to this exemption, for the purpose of preserving the jurisdiction of the Commission and the Commission's capacity to effectively regulate and audit PacifiCorp's relationship to ScottishPower and its affiliates.

In addition, Pacific Power and Utah Power will maintain their corporate identities, thus ensuring local management of operations and attention to concerns. ScottishPower is a financially viable company and its goals meet PacifiCorp's in terms of ensuring high quality service, safety, and reliability. All existing labor agreements will be maintained.

PacifiCorp will maintain its own capital structure and its own debt. No significant adverse effect is expected on PacifiCorp's bond ratings. ScottishPower has no plans to sell or transfer any of PacifiCorp's assets other than the sale of its California distribution system assets and the Centralia generating system. However, any sale or transfer of PacifiCorp's assets will be subject to our approval pursuant to § 851.

ORA raised concerns related to customer service, access to books and records, affiliate transactions, the environment, and employees. ScottishPower and PacifiCorp have made commitments that address ORA's concerns. These commitments are delineated in Appendix A. These commitments are reasonable and should be implemented.

Before the merger can occur, Applicants must meet various conditions outlined in Ordering Paragraph 2. Applicants must make all necessary filings and obtain required approval from various state and federal agencies.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

In Resolution ALJ 176-3009 dated February 4, 1999, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. ORA filed a protest, which it has now withdrawn. Given this status public hearing is not necessary, and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3009.

Findings of Fact

1. This transaction involves a change in ownership of PacifiCorp. It does not involve a consolidation of operating utilities, a change in utility tariffs, or a sale or transfer of utility property or certificates of public convenience and necessity.

2. The transaction is subject to the approval of the utility regulatory commissions in the states of Idaho, Oregon, Utah, and Wyoming. The effects of the transaction on the public interest will be examined in these other jurisdictions.

3. PacifiCorp provides electric service to 41,273 retail customers in its California service territory, which represents only 3.3% of its retail customers system-wide and 2% of its retail electricity sales system-wide. Any benefit of this Commission's review of the transaction, in addition to the reviews being conducted by PacifiCorp's other states, would likely not be significant, while the burden of a full Section 854 proceeding on the Applicants would be significant.

4. The transaction does not contemplate the sale of any of PacifiCorp's generation, transmission, or distribution assets.

5. ScottishPower does not currently own or operate any public utility properties in the United States and does not currently participate in any energy or energy-related markets in the U.S., either directly or indirectly.

6. Separately, PacifiCorp is in the process of selling its California distribution system assets. If the sale is completed, as the Applicants expect, the Commission's resources would be better applied to the review of the sale and its effects on PacifiCorp's customers. A sale of PacifiCorp's California service territory would moot the public interest issues associated with this transaction.

7. The Applicants agree to the Commission's adoption of the terms set forth in Appendix 3 to the Application as conditions to this exemption, for the purpose of preserving the jurisdiction of the Commission and the Commission's capacity to effectively regulate and audit PacifiCorp's relationship to ScottishPower and its affiliates.

8. Pursuant to Decision 88-04-062, PacifiCorp is exempt from the provisions of the Pub. Util. Code relating to stocks and securities transactions.

9. No significant adverse effect on PacifiCorp's bond ratings is expected from the transaction. ScottishPower intends to maintain separate debt ratings for PacifiCorp.

10. The statements and commitments set forth in Appendix A are approved. Applicants are expected to abide by them.

11. We waive the filing requirements set forth in Rules 17 and 36 of our Rules of Practice and Procedure. These financial statements are not necessary because this application seeks exemption from the requirements of § 854, rather than seeking approval of a merger, per se.

Conclusions of Law

1. The application of § 851 et seq. to the merger of a subsidiary of ScottishPower with PacifiCorp is not necessary in the public interest.

2. Subject to the conditions of exemption set forth in the following order, Applicants are exempt from the provisions of § 854.

3. The application should be granted subject to conditions of exemption.

4. All necessary state and federal filings must be made and regulatory approval obtained before the merger can take effect.

5. This order should be effective today in order to allow Applicants time to meet the conditions imposed in Ordering Paragraph 2.

6. Any sale or transfer of PacifiCorp's jurisdictional assets would be subject to Commission approval pursuant to § 851.

ORDER

IT IS ORDERED that:

1. ScottishPower plc (ScottishPower) and PacifiCorp (collectively, Applicants) are authorized to merge in accordance with the Agreement and Plan Merger between ScottishPower and PacifiCorp dated as of December 6, 1998, attached to the Application as Appendix 2.

2. As a condition precedent to the merger, Applicants shall file with the Energy Division of the Commission within 60 days after the effective date of this decision, a resolution of the Boards of Directors of both companies agreeing to the following conditions:

   a. ScottishPower and PacifiCorp agree that in their management and operation of PacifiCorp in the state of California they will comply with the Commission's rules and regulations regarding public utilities and their affiliates.

   b. To determine the reasonableness of allocation factors used by ScottishPower to assign costs to PacifiCorp and amounts subject to allocation or direct charges, the Commission may audit the accounts of ScottishPower and its affiliates which are the bases for charges to PacifiCorp. ScottishPower and PacifiCorp agree to cooperate fully with such Commission audits.

c. ScottishPower and PacifiCorp will provide the Commission access to all books of account, documents, and data of ScottishPower or its affiliates that pertain to transactions between PacifiCorp and ScottishPower or its affiliates.

d. PacifiCorp will maintain its own accounting system, separate from ScottishPower's accounting system. PacifiCorp financial books and records will be kept in the United States.

e. ScottishPower and PacifiCorp will make their officers and employees, and those of their affiliates, available to appear and testify, as necessary or required in Commission proceedings, in connection with future transactions between PacifiCorp and ScottishPower or its affiliates, and will bear the associated costs.

f. If PacifiCorp sells or transfers its California distribution system, ScottishPower and PacifiCorp agree that PacifiCorp will first apply for an order of the Commission authorizing such sale in accordance with Public Utilities Code Section 851.

3. The authorization granted by this decision shall expire if not exercised by December 31, 1999.

4. This proceeding is closed.

This order is effective today.

Dated June 10, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
LORETTA M. LYNCH
JOEL Z. HYATT
Commissioners

Certified as a True Copy
of the Original

ASST. EXECUTIVE DIRECTOR, PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

Appendix A

SUMMARY OF TESTIMONY

This document is a summary of system performance and customer service benefits provided in the testimony of ScottishPower. In the event of a conflict between the testimony of ScottishPower and this summary, the testimony will govern.

I. CUSTOMER SERVICE

[Testimony of Bob Moir]

A. Network Performance

1. System Availability. On the five-year anniversary of the completion of the transaction,[1] the underlying System Average Interruption Duration Index (SAIDI) for PacifiCorp customers in the State of California will have been reduced by 10%.

2. System Reliability. On the five-year anniversary of the completion of the transaction, the underlying System Average Interruption Frequency Index (SAIFI) for PacifiCorp customers in the State of California will have been reduced by 10%.

3. Momentary Interruptions. On the five-year anniversary of the completion of the transaction, the Momentary Average Interruption Frequency Index (MAIFI) for PacifiCorp customers in the State of California will have been reduced by 5%.

4. Worst Performing Circuits. The 5 worst performing circuits in the State of California will be selected annually on the basis of the Circuit Performance Indicator (CPI),[2] as calculated over a three-year average excluding extreme events. Corrective measures will be taken within 2 years of implementation of the performance targets to reduce the CPI by 20%.

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[1] Reference to "completion of the transaction" throughout this document means the closing of the transaction pursuant to the Amended Merger Agreement.

[2] The CPI is a weighted, composite index based on the following fourfactors: 1) MAIFI; 2) SAIDI; 3) SAIFI; 4) Number of lockouts.

5. Supply Restoration. For power outages because of a fault or damage on PacifiCorp's system, PacifiCorp will restore supplies on average to 80% of customers within 3 hours.

6. Penalties. For each of the standards not achieved in the State of California at the end of the five-year period, ScottishPower will pay a financial penalty equal to $1.00 for every customer served by PacifiCorp in California.

7. Implementation. Specific terms and conditions relating to the implementation of the Network Performance Standards are set forth in the testimony of ScottishPower.[3]

B. Customer Service Performance

1. Telephone Service Levels. Within 120 days after completion of the transaction, 80% of calls to PacifiCorp's Business Centers will be answered within 30 seconds. This target will be increased to 80% in 20 seconds by January 1, 2001 and 80% in 10 seconds by January 1, 2002.

2. Complaint Resolution.

a. Non-Disconnect Complaints. Within 90 days after completion of the transaction, PacifiCorp will investigate and provide a response to all complaints referred by the Commission within 3 business days.[4]

b. Disconnect Complaints. Within 90 days after completion of the transaction, complaints related to service disconnection will be responded to within 4 business hours.[5]

c. Commission Complaints. Within 90 days after completion of the transaction, ninety percent of complaints referred to PacifiCorp by the Commission will be resolved within 30 days. This percentage will be increased to 95 percent by 2001.

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[3] Initial benchmarks for SAIDI, SAIFI and MAIFI will be established based upon PacifiCorp's historical performance, adjusted as necessary where the change in measurement and monitoring accuracy results in a change in the reported (but not actual) reliability indices, as discussed in Mr. Moir's testimony at page 7.

[4] Business days are defined as Monday through Friday excluding company holidays.

[5] Business hours are defined as 8:00 a.m. to 5:00 p.m.

3. Implementation. Specific terms and conditions relating to the implementation of the Customer Service Performance Standards are set forth in the testimony of ScottishPower.

C. Customer Service Guarantees

1. Restoring the Customer's Supply.

a. Guarantee. If the customer loses electricity supply because of a fault in PacifiCorp's system, PacifiCorp will restore the customer's supply as soon as possible.

b. Penalty. If power is not restored in 24 hours, customers can claim $50 for residential customers and $100 for commercial and industrial customers. For each extra period of 12 hours the customer's supply has not been activated, the customer can claim $25.

2. Appointments.

a. Guarantee. PacifiCorp wili keep all mutually agreed appointments with the customer, whether over the phone or in writing. Beginning in the year 2001, PacifiCorp will offer the customer a morning appointment, between 8 AM and 1 PM, or an afternoon appointment, between 12 Noon and 5 PM.

b. Penalty. If PacifiCorp fails to meet its guarantee, PacifiCorp will automatically pay the customer $50.

3. Switching On the Customer's Power.

a. Guarantee. Upon customer request, PacifiCorp will activate the power supply within 24 hours provided no construction is required and all government requirements are met.

b. Penalty. If PacifiCorp fails to meet its guarantee, it will automatically pay the customer $50. In addition, for each extra period of 12 hours the customers power supply has not been activated, PacifiCorp will automatically pay-out $25 to the customer.

4. Estimates for Providing a New Supply.

a. Guarantee. Upon request by a customer for new power supply, PacifiCorp will call the customer back within 2 business days of the customer's initial call and schedule a mutually agreed appointment with an estimator. If PacifiCorp needs to change its network, it will provide a written estimate to the customer within 15 business days of the customer's initial meeting with the estimator. If PacifiCorp does not need to change its network, it will provide an estimate to the customer within 5 business days of the customer's initial meeting with the estimator.

b. Penalty. If PacifiCorp fails to meet its guarantee, PacifiCorp will automatically pay the customer $50 for each failure.

5. Response to Bill Inquiry.

a. Guarantee. PacifiCorp will investigate and respond within 15 business days of a customer's inquiry about its electric bill.

b. Penalty. If PacifiCorp fails to meet its guarantee, PacifiCorp will automatically pay the customer $50 for each failure.

6. Problems with the Customer's Meter.

a. Guarantee. PacifiCorp will investigate and report back to the customer within 15 business days if the customer suspects a problem with its meter.

b. Penalty. If PacifiCorp fails to meet its guarantee, PacifiCorp will automatically pay the customer $50 for each failure.

7. Planned Interruptions.

a. Guarantee. PacifiCorp will give the customer at least 2 days notice if it is necessary to turn the customer's power supply off for planned maintenance work or testing.

b. Penalty. If PacifiCorp fails to meet its guarantee, customers can claim $50 for residential customers and $100 for commercial and industrial customers.

8. Power Quality Complaints.

a. Guarantee. Upon notification from a customer about a problem with the quality of electric supply, PacifiCorp will either initiate an investigation within 7 days or explain the problem in writing within 5 business days.

b. Penalty. If PacifiCorp fails to meet its guarantee, it will automatically pay the customer $50.

9. Implementation. Specific terms and conditions relating to the implementation of the Customer Service Guarantees are set forth in the testimony of ScottishPower. Data calculations to measure performance will be audited by the company and an outside auditor.

10. Reporting.

a. To Customers. PacifiCorp will issue a report to the customer by June 30 of each year regarding its record in improving Performance Standards and how well it has performed against its Customer Guarantees. Each report will contain an overview of standards, targets and guarantees and describe the performance results for that year. The report will also discuss any new targets PacifiCorp will be applying in the coming year.

b. To Commission. PacifiCorp will provide an annual report to the Commission by May 31 of each year that will discuss implementation of ScottishPower's programs and procedures for providing improved performance. The report will provide a general summary of how PacifiCorp performed according to the standards, targets and guarantees. The report will: (i) provide performance results for each standard, target or guarantee; (ii) identify excluded exceptions; (iii) explain any historical and anticipated trends and events that affected or will affect the measure in the future; (iv) describe any technological advancements in data collection that will significantly change any performance indicator; (v) discuss any "phase in" of new standards, targets or guarantees; and (vi) include the name and telephone numbers of contacts at PacifiCorp to whom inquiries should be addressed. If the company is not meeting a standard, target or guarantee, the report will: (i) provide an analysis of relevant patterns and trends; (ii) describe the cause or causes of the unacceptable performance; (iii) describe the corrective measures undertaken by the company; (iv) set a target date for completion of the corrective measures; and (v) provide details of any penalty payments due.

II. REGULATORY OVERSIGHT

[Testimony of Robert D. Green]

A. Access to Books and Records

1. PacifiCorp will maintain its own accounting system, separate from ScottishPower's accounting system. All PacifiCorp financial books and records will be kept in Portland, Oregon, and will continue to be available to the Commission upon request at PacifiCorp's offices in Portland and elsewhere in accordance with current practice.

B. Cost Allocation, Affiliated Interest Transactions

1. By the end of the third year following the completion of the transaction, ScottishPower will have achieved a net reduction of $10 million annually in PacifiCorp's corporate costs ($15 million of annual cost savings in corporate costs which, when offset by $5 million of cost increases, will produce a net reduction of $10 million annually in corporate costs). ScottishPower will commit to reflecting this reduction in PacifiCorp's results of operations filed with the Commission.

2. ScottishPower will provide an analysis of its proposed allocation of corporate costs within ninety days after completion of the transaction.

3. To determine the reasonableness of allocation factors used by ScottishPower to assign costs to PacifiCorp and amounts subject to allocation or direct charges, the Commission or its agents may audit the records of ScottishPower which are the bases for charges to PacifiCorp. ScottishPower will cooperate fully with such Commission audits.

4. ScottishPower and PacifiCorp will provide the Commission access to all books of account, as well as all documents, data and records of their affiliated interest, which pertain to any transactions between PacifiCorp and its affiliated interests.

5. ScottishPower and PacifiCorp agree to comply with all existing Commission statutes and regulations regarding affiliated interest transactions, including timely filing of applications and reports.

6. ScottishPower will not subsidize its activities by allocating to or directly charging PacifiCorp expenses not authorized by the Commission to be so allocated or directly charged.

7. Neither ScottishPower nor PacifiCorp will assert in any future Commission proceeding that the provisions of the Public Utility Holding Company Act of 1935 preempt the Commission's jurisdiction over affiliated interest transactions.

C. Transaction Costs

1. ScottishPower and PacifiCorp will exclude all costs of the transaction from PacifiCorp's utility accounts.

D. Financial Issues

1. PacifiCorp will maintain separate debt and, if outstanding, preferred stock ratings.

2. ScottishPower and PacifiCorp will provide the Commission with unrestricted access to all written information provided to common stock, bond, or bond rating analysts, which directly or indirectly pertains to PacifiCorp.

III. COMMITMENT TO THE ENVIRONMENT

[Testimony of Alan V. Richardson]

A. Renewable Resources

1. PacifiCorp will develop an additional 50 MW of system-wide renewable resources (wind, solar and/or geothermal) at an anticipated cost of approximately $60 million within five years after completion of the transaction.

2. Within 60 days after completion of the transaction, PacifiCorp will file applications in each state for a "green resource" tariff.

3. PacifiCorp will contribute $100,000 to the Bonneville Environmental Foundation for use in the development of new renewable resources and fish mitigation projects.

B. Environmental Management

1. PacifiCorp will have environmental management systems in place that are self-certified to ISO 14001 standards at all PacifiCorp operated thermal generation by the end of 2000.

2. ScottishPower will include PacifiCorp operations in ScottishPower's comprehensive annual environmental report with appropriate specific goals.

3. ScottishPower will include a PacifiCorp officer on the Environmental Policy Advisory Committee.

4. ScottishPower will develop a process to gather outside input on environmental matters, such as the establishment of an Environmental Forum.

IV. COMMITMENT TO COMMUNITIES

A. Financial Contribution [Testimony of Alan V. Richardson]

1. ScottishPower will contribute $5 million to the PacifiCorp Foundation upon completion of the transaction.

2. ScottishPower will maintain the existing level of PacifiCorp's other community-related contributions, both in terms of monetary and in-kind contributions.

B. Programs [Testimony of Jack Kelly]

1. ScottishPower will develop a "School to Work" initiative. Skill development opportunities will be made available through the Open Learning Centers, work experience mentoring, and work shadowing.

2. ScottishPower will maintain the existing Regional Advisory Boards.

C. Low-Income Customers [Testimony of Jack Kelly]

1. ScottishPower will commit $1.5 million per year system-wide (in addition to PacifiCorp's existing commitment of $1.5 million annually) to programs that encourage the economic well-being of communities, including the following:

a. ScottishPower will double the number of customers assisted by the heat assistance funding program for those customers who qualify under the Federal Low Income Energy Assistance Program and will reintroduce the matching concept with PacifiCorp matching customer donations to heat assistance programs annually.

b. ScottishPower will establish a debt counseling service for those customers who have difficulty in paying their monthly electric bills.

c. ScottishPower will expand the commitment to educate customers regarding energy efficiency in order to help customers with payment difficulties, and to promote electricity safety for all customers.

V. COMMITMENT TO EMPLOYEES

A. Existing Labor Agreements [Testimony of Alan V. Richardson] 1. ScottishPower will honor existing labor contracts with all levels of staff.

B. New Programs [Testimony of Alan V. Richardson]

1. ScottishPower will introduce the following programs in the PacifiCorp service territory, upon completion of the transaction, at a start-up cost of approximately $3 million and estimated annual expenditures of approximately $1 million:

a. ScottishPower will develop one "best-in-class" training center in each of Oregon and Utah. These centers will provide employees with opportunities to improve their work-related skills.

b. ScottishPower will phase in the introduction of the ScottishPower Open Learning centers. At these Open Learning centers, employees will be able to supplement their work-related skills with other skills designed to enhance their overall knowledge.

c. ScottishPower will establish partnerships with local colleges and universities to develop management training programs.

C. Occupational Health [Testimony of Jack Kelly]

1. ScottishPower will examine the appropriateness of introducing for PacifiCorp employees its successful programs already adopted in the U.K. to encourage a healthy lifestyle for employees.

(END OF APPENDIX A)

CA-26
6/10/99

A 99-01-036

DECISION: 99-06-049

MAIL DATE: 6/10/99

Copy of **"OPINION "** and order mailed to the following.

SEE ATTACHED LIST FOR APPEARANCES, STATE SERVICE

Count 12

6/10/99
lil

doc #15576 (rev. 3/4/98)

************ SERVICE LIST *************

Last updated on 23-APR-1999 by: CPL
A9901036 LIST

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PROOF OF SERVICE BY MAIL

I, Lillian Li, declare:

I am over the age of 18 years, not a party to this proceeding, and am employed by the California Public Utilities Commission at 505 Van Ness Avenue, San Francisco, California.

On 6/10/99, I deposited in the mail at San Francisco, California, a copy of:

99-06-049

(DECISION NUMBER OR TYPE OF HEARING)

6/10/99

(DATE OF HEARING)

A99-01-036

(APPLICATION/CASE/OII/OIR NUMBER)

in a sealed envelope, with postage prepaid, addressed to the last know address of each of the addressees in the attached list.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 6/10/99, at San Francisco, California.

Lillian Li *

*Signature

9/92