

Decision 99-10-059 October 21, 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 Cal. Pub. Util. Code Sec. 854.

Application 99-01-036  
(Petition for Modification  
Filed August 23, 1999)

**FORMAL FILE COPY**  
**O P I N I O N**

PacifiCorp, Scottish Power plc (ScottishPower), and the Office of Ratepayer Advocates (ORA) (jointly Petitioners) seek to modify Decision (D.) 99-06-049, which granted the request of applicants PacifiCorp and ScottishPower for an exemption from the Commission's merger approval requirements contained in Section 854 of the Pub. Util. Code, subject to certain enumerated conditions. (See Conclusions of Law 2, 3, and 4 at page 18.)

Petitioners request that D.99-06-049 be modified in the following two respects.

**1. Additional Agreed Conditions**

D.99-06-049 fails to list among the express conditions set forth in Ordering Paragraph 2 at page 18, two conditions to which ORA and the applicants had agreed. These commitments are as follows:

"g. Following Commission approval of the application and following the closing of the merger, the applicants will propose in PacifiCorp's next PBR proceeding the adoption of a financial incentive and penalty mechanism tied to the achievement of service standards to be agreed to at that time."

"h. PacifiCorp and ScottishPower commit to continued, active participation in the Commission's reliability rulemaking, R.96-11-004."

Petitioners believe that these two conditions were omitted from D.99-06-049 inadvertently, and they request that the decision be modified to include them as Conditions g and h in Ordering Paragraph 2.

Applicants have already submitted to the Energy Division, in accordance with Ordering Paragraph 2 resolutions from their respective Boards of Directors agreeing to the conditions set forth in D.99-06-049 as well as the two additional commitments listed above. The inclusion of these two additional commitments in Ordering Paragraph 2 will assure ORA that these commitments are a part of the authorization and that they will be met by the Applicants.

## **2. Amendment and Restatement of Merger Agreement**

Since the issuance of D.99-06-049 on June 10, 1999, the shareholders of PacifiCorp and ScottishPower have approved an Amended and Restated Agreement and Plan of Merger, dated as of December 6, 1998, as amended as of January 29, 1999 and February 9, 1999, and amended and restated as of February 23, 1999 (the Restated Merger Agreement). A copy of the Restated Merger Agreement is attached to this petition as Appendix 2A. At the time of D.99-06-049, the conditions necessary for the effectiveness of the Restated Merger Agreement had not been satisfied and only the original Agreement and Plan of Merger dated as of December 6, 1998 (the "Original Merger Agreement") was included in the record. The Restated Merger Agreement was approved by the ScottishPower shareholders on June 15, 1999 and by the PacifiCorp shareholders on June 17, 1999.

The primary purpose of the Restated Merger Agreement is to reorganize the ScottishPower group and create a separate holding company (New ScottishPower) over both ScottishPower and PacifiCorp. Under the reorganization, New ScottishPower will register as the holding company under

the Public Utility Holding Company Act of 1935 and the U.S. utility businesses (represented by PacifiCorp) and the U.K. utility businesses (represented by ScottishPower and its subsidiaries) will be held in separate subsidiaries. A diagram of the New Scottish Power organizational structure is attached to this petition as Appendix 4A. (For comparison, a diagram of the ScottishPower organizational structure under the Original Merger Agreement is attached to the application as Appendix 4.) The scheme of arrangement for the creation of New ScottishPower has been sanctioned by the Court of Sessions, Edinburgh, and the Restated Merger Agreement is now effective, subject to obtaining all required regulatory approvals.

While the Restated Merger Agreement makes no changes relevant to our determination in D.99-06-049, Ordering Paragraph 1 of that decision specifically references the Original Merger Agreement which had been appended to the application when filed. Petitioners request that Ordering Paragraph 1 be modified to reflect a grant of authority to merge under the Restated Merger Agreement. Specifically, petitioners request that Ordering Paragraph 1 be modified to read as follows:

"1. Scottish Power plc (ScottishPower) and PacifiCorp (collectively, Applicants) are authorized to merge substantially in accordance with the terms of the Amended and Restated Agreement and Plan of Merger between ScottishPower and PacifiCorp dated as of December 6, 1998, as amended as of January 29, 1999 and February 9, 1999, and amended and restated as of February 23, 1999, attached to the Petition for Modification as Appendix 2A."

Petitioners have included the word "substantially" in the second line of this ordering paragraph to permit the merger to proceed so long as there is no material departure from the terms of the agreement.

There are no protests to the petition; it will be granted.

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

### **Findings of Fact**

1. D.99-06-049 failed to list certain express conditions to which applicants had agreed as part of their merger approval.
2. The conditions are set forth in the ordering paragraphs of this decision.
3. Because of changes to the plan of merger between the applicants, Ordering Paragraph 1 of D.99-06-049, should be modified to incorporate the changes. The substance of the merger has not changed.

### **Conclusion of Law**

The petition for modification should be granted as set forth in the following order.

## **O R D E R**

**IT IS ORDERED** that:

1. Ordering Paragraph 1 of Decision (D.) 99-06-049 is modified to read as follows:

"1. Scottish Power plc (ScottishPower) and PacifiCorp (collectively, Applicants) are authorized to merge substantially in accordance with the terms of the Amended and Restated Agreement and Plan of Merger between ScottishPower and PacifiCorp dated as of December 6, 1998, as amended as of January 29, 1999 and February 9, 1999, and amended and restated as of February 23, 1999, attached to the Petition for Modification as Appendix 2A."

2. Conditions g and h are added to Ordering Paragraph 2 in D.99-06-049 as follows:

a. Condition g:

"Following Commission approval of the application and following the closing of the merger, the applicants will propose in PacifiCorp's next Performance-Based Ratemaking proceeding the adoption of a financial incentive and penalty mechanism tied to the achievement of service standards to be agreed to at that time."

b. Condition h:

"PacifiCorp and ScottishPower commit to continued, active participation in the Commission's reliability rulemaking, R.96-11-004."

3. This proceeding is closed.

This order is effective today.

Dated October 21, 1999, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

JOEL Z. HYATT

CARL W. WOOD

Commissioners

*[Handwritten Signature]*  
Certified as a True Copy  
of the Original

ASST. EXECUTIVE DIRECTOR, PUBLIC UTILITIES COMMISSION  
STATE OF CALIFORNIA

PROOF OF SERVICE BY MAIL

I, Sandra Jackson, 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 10-21-99, I deposited in the mail at San Francisco, California, a copy of:

99-10-059

(DECISION NUMBER OR TYPE OF HEARING)

October 21, 1999

(DATE OF HEARING)

A-99-01-036

(APPLICATION/CASE/OII/OIR NUMBER)

in a sealed envelope, with postage prepaid, addressed to the last known 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 10-21-99, at San Francisco, California.

Sandra Jackson

\*Signature  
9/92

CA-22  
10/21/99

A.99-01-036

DECISION: 99-10-059  
MAIL DATE: 10-21-99

Copy of **“OPINION” and order** mailed to the following.

**SEE ATTACHED LIST FOR APPEARANCES, STATE SERVICE**

10/19/99  
lpd

Count: 11

\*\*\*\*\* SERVICE LIST \*\*\*\*\*

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

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