

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

FROM: WELDON STUTZMAN

DATE: JANUARY 12, 2005

**RE: CASE NO. PAC-E-01-6
DISMISSAL OF CASE INITIATED BY PACIFICORP TO DETERMINE ITS
WHEELING OBLIGATIONS TO SNAKE RIVER VALLEY ELECTRIC
ASSOCIATION**

This case was initiated by PacifiCorp in 2001 when it filed a petition pursuant to *Idaho Code* § 61-332D. Section 61-332D was enacted in 2001 in response to litigation between PacifiCorp and Snake River Valley Electric Association (Snake River) regarding PacifiCorp's obligation to wheel electric service to Snake River. Section 61-332D provides that electric suppliers are not required to provide wheeling service "if such service results in retail wheeling and/or a sham wholesale transaction." An electric supplier that declines to furnish wheeling service may petition the Commission "for review of the electric supplier's action in respect to a request for such service."

After PacifiCorp filed its Petition with the Commission, the court litigation between the parties continued. Accordingly, at the parties' request, this action before the Commission was put on hold. Late last year the federal case finally concluded when the United States Supreme Court declined to hear an appeal by Snake River of a Ninth Circuit of Appeals decision. Staff contacted the attorney for PacifiCorp regarding its interest in pursuing its Petition filed in this case. PacifiCorp's attorney stated the finality of the federal court litigation, and the fact that the period identified by Snake River for its wheeling request terminated in April 2001, rendered the case moot and PacifiCorp therefore does not intend to pursue its Petition. PacifiCorp's attorney provided a letter to that effect, a copy of which is attached.

Staff recommends, in light of the lack of interest in the case by the Petitioner, that the Commission dismiss this case and close the file.

COMMISSION DECISION

Should the Petition filed by PacifiCorp for an order determining its wheeling obligation to Snake River be dismissed?



Weldon Stutzman

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January 10, 2005

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Re: Case No. PAC-E-01-6; Petition of PacifiCorp re Snake River Valley Electric Association

Dear Mr. Stutzman:

As you know, the 9th Circuit Court of Appeals last year affirmed the District Court decisions in the Snake River Valley Electric Association v. PacifiCorp antitrust case, and the U.S. Supreme Court recently denied Snake River's petition for certiorari. The letter from Snake River which was the subject of that case, and the basis for PacifiCorp's Petition in the above-referenced matter, states that Snake River was requesting transmission service through April, 2001. (Exhibit B to PacifiCorp's Petition, attached hereto.) It is also our understanding that Snake River never sought Commission approval to provide electric service to customers served by PacifiCorp. Idaho Code § 61-334B. In light of the finality of the antitrust case, and inasmuch as the period identified by Snake River for its "request" for transmission service has long since passed, we believe the above-referenced matter is now moot.

Very truly yours,

A handwritten signature in black ink, appearing to read "John M. Eriksson", written over a horizontal line.

John M. Eriksson

cc: Charles F. Wheatley

Oregon
Washington
California
Utah
Idaho