

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
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WORKING FILE**

FROM: SCOTT WOODBURY

DATE: MARCH 29, 2002

**RE: CASE NO. PAC-E-02-1 (PacifiCorp)
COMPANY PROPOSAL TO RECOVER DEFERRED POWER COSTS
INTERVENOR PETITION FOR CLARIFICATION**

On November 15, 1999, the Commission issued final Order No. 28213 in PacifiCorp/ScottishPower merger Case No. PAC-E-99-1. The Commission approved the merger transaction subject to terms and conditions. The Commission's Order contained the following language:

Merger Approval Condition No. 2

"At a minimum, ScottishPower shall not seek a general rate increase for its Idaho service territory effective prior to January 1, 2002." Case No. PAC-E-99-1, Order No. 28213 p. 8.

Commission Findings

"As a final and irrefutable measure to ensure that rates will not increase as a result of the merger, we hereby impose the additional condition (Merger Approval Condition No. 2) that following the merger, PacifiCorp shall not

seek a general rate increase effective prior to January 1, 2002. This literally guarantees that PacifiCorp's customers will see an immediate rate reduction lasting at least two years through the combination of the merger rate credit and the moratorium on general rate increases imposed herein." Order No. 28213 p. 31.

Intervenor Timothy Shurtz petitions and requests the Commission to clarify, explain and enunciate the meaning of the foregoing Merger Condition No. 2. Intervenor requests that the Commission clarify how the proposed retroactive or "deferred excess net power costs" recovery sought now are not in reality an attempt to avoid the "moratorium" agreed to in inducing this Commission to accept the merger then being considered. In other words, he queries why is a collection now, and in the immediate future, of the past two years deferred excess net power costs, not in reality a violation of the Commission's Order of a "moratorium on general rate increases"?

Included in his Petition for Clarification, the Petitioner also cites the following Order language "PacifiCorp/ScottishPower shall not subsidize its non-regulated businesses with its regulated businesses." Order No. 28213 p. 14.

Commission Decision

As the Commission is aware, the parties in this case are engaging in settlement discussions. The general terms of a proposed settlement have been agreed to. The Intervenor and Petitioner, Timothy Shurtz, has indicated his intention not to sign the proposed settlement agreement and pursuant to IDAPA 31.01.01.275 would intend to examine supporting witnesses, offer his own witnesses, or argue against the settlement. Mr. Shurtz would like a Commission ruling on his Petition for Clarification prior to the Commission's consideration of any stipulation submitted. Is PacifiCorp under Merger Condition No. 2 prevented from requesting recovery of excess power costs that accrued during the moratorium period? How does the Commission wish to handle the Petition for Clarification?

Scott D. Woodbury

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