IDAHO PUBLIC UTILITIES COMMISSION

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Case No. PAC-E-02-1, Order No. 28998
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Majority of commission says PacifiCorp cost recovery does not violate merger agreement

BOISE – By a 2-1 vote, the Idaho Public Utilities Commission ruled today that PacifiCorp's current application seeking recovery for costs the utility incurred buying power on last year's high-priced wholesale market is not a violation of a two-year rate moratorium the commission imposed on the company before approving its merger with ScottishPower in 1999.

While today's order said PacifiCorp is not violating the moratorium, commissioners stressed that the order does not mean PacifiCorp will be able to pass on any or all of those expenses to customers. That matter is yet to be decided by the commission.

Before it approved the merger between PacifiCorp and ScottishPower in 1999, the commission required the newly merged utility to meet 46 conditions. The first condition stated that rates would not increase as a result of the merger. Merger Condition No. 2 said ScottishPower "shall not seek a general rate increase for its Idaho service territory effective prior to January 1, 2002."

On Jan. 2, 2002, PacifiCorp filed an application with the commission seeking authority to recover about $38 million in extraordinary power supply costs it incurred in late 2000 and through much of 2001.

Timothy Shurtz, a Firth resident and an intervenor in the PacifiCorp cost recovery case, questioned whether PacifiCorp's current attempt to recover power supply costs is "an attempt to avoid the moratorium agreed to in inducing this commission to accept the merger then being considered." Shurtz petitioned the commission for a clarification of Merger Condition No. 2. Today's order is the commission's answer to Mr. Shurtz' petition.

The majority on the commission said PacifiCorp's application does not violate the merger condition because rates did not increase during the two-year rate moratorium.

Commission President Paul Kjellander and Commissioner Marsha Smith said PacifiCorp "did not seek any increase rate to be effective before 2002, therefore the company has fulfilled that condition." Further, the costs PacifiCorp seeks to recover are not merger-related, the two commissioners said, but attributable to "extraordinarily high wholesale market prices outside the control of the company."

Commissioner Dennis Hansen dissented, saying that PacifiCorp's attempt to recover costs th incurred during the rate moratorium "undermines the benefits of this agreement to the ratepayers."

"I believe ratepayers would not have supported the merger condition if they had known that could petition this commission for reimbursement of costs incurred during the rate moratorium freez Commissioner Hansen said.

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"We do not decide whether, or how much, if any, of those expenses should be passed on to customers," the commissioners said. Settlement negotiations between the company, commission staff and other interested parties regarding cost recovery issues are under way.