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IDAHO PUBLIC UTILITIES COMMISSION  
Case No. PAC-E-02-1, Order No. 29136  
FOR IMMEDIATE RELEASE October 25, 2002  
Contact: Gene Fadness (208) 334-0339

### **Commission upholds PacifiCorp violation, but decreases penalty**

BOISE – The Idaho Public Utilities Commission today unanimously upheld its earlier finding that PacifiCorp violated a customer service rule by not providing customer notice of a proposed change in rates. But the commission agreed with the company that a \$20 per customer credit is excessive and contrary to state statute. Instead, the commission assessed a civil penalty of \$10,000 to be paid to the State of Idaho General Fund.

Rule 102 of the commission's Utility Customer Information Rules require gas, electric and water utilities to give each customer notice, usually through a bill stuffer, when the utility applies to the commission for a change in rates or charges. PacifiCorp contended the rule did not apply because its January application to recover \$38 million in power supply costs was not a permanent rate increase, but only a temporary surcharge. The company said it did issue press releases and took other steps to notify customers once public hearings on PacifiCorp's application were scheduled in Rigby and Preston last May.

On June 7, the commission accepted a settlement that allowed the company to recover \$22.7 million of the original \$38 million requested. The commission also ordered the company to credit each of its 55,000 southeast Idaho customers \$20 for failure to notify customers according to commission rules.

PacifiCorp filed a motion for reconsideration, contesting the applicability of the rule and the amount of the customer credit. The commission granted reconsideration and conducted a hearing in September. At that hearing, PacifiCorp officials testified providing each customer notice is difficult because multiple communications to customers are interpreted as multiple rate changes. The commissioners disagreed. "Customers should not be kept uninformed merely because a case is complex and difficult to describe and the notice may be misunderstood," the commissioners said. "It is the company's responsibility to craft a clear description of the filing so that customers can distinguish between what is proposed and what is approved."

The company argued that the rule regarding customer notice is ambiguous when it comes to cases that are not permanent rate increases or annual rate tracker cases. The commission's order responds by saying, "As a general practice, we find that when a company perceives some definitional ambiguity or a similarity to cases where notice is required, it should err on the side of providing notice."

PacifiCorp further argued that because it issued press releases and met with customer groups, there was significant public comment on its filing and participation in the two public hearings. However, that still does not justify lack of notice, commissioners said. "This commission will not countenance an attempt by the company to establish a principle that it may disregard commission rules if it can later demonstrate a lack of injury or harm to the public." Many customers complained, the commission said, of not being given enough advance notice to prepare for the Rigby and Preston hearings. And: "The overall tenor of written comments submitted in this case instead, if anything, indicates that the public was confused as to what was at issue."

The commission agreed with the company that the \$20 credit to each customer, which would amount to about \$1.1 million, was excessive when compared to past penalties against utilities for similar violations.

Idaho statutes allow a \$2,000 penalty for each rule violation. The commission determined to assess a civil penalty of \$2,000 for each month from the time the company applied in January until public hearings in May, or \$10,000. The check must be submitted to the state general fund by no later than Nov. 15. If PacifiCorp does not voluntarily make the payment, the commission shall commence an action in Idaho District Court to recover the penalty as authorized by law.

"While the company contends that the commission should regard the company's failure to provide Rule 102 notification notice as simply a good faith mistake, it is troubling that the company appears to discount the value of individual notice, and the value of getting information with the monthly bill," the commissioners said.

Friday's order can be accessed on the commission's Web site at [www.puc.state.id.us](http://www.puc.state.id.us). Click on "File Room," and then on "Recent Orders and Notices" and scroll down to Order No. 29136. The order is also available at commission offices, 472 W. Washington St, Boise.

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IDAHO PUBLIC UTILITIES COMMISSION  
Case No. PAC-E-02-1, Interlocutory Order No. 29079  
FOR IMMEDIATE RELEASE July 24, 2002  
Contact: Gene Fadness (208) 334-0339

**Commission grants PacifiCorp petition to reconsider; set Sept. 10 hearing**

BOISE – The Idaho Public Utilities Commission is granting PacifiCorp’s petition that the commission reconsider its June 7 decision requiring the utility to pay each of its customers a one-time \$20 credit for the company’s alleged failure to provide customers adequate notice about its recently approved power cost surcharge.

In June, the commission granted PacifiCorp the authority to collect a \$22.7 million surcharge from customers over a two-year period. The temporary surcharge pays for costs the company incurred during 2000-2001 buying power on the wholesale market. The company originally requested \$38 million.

In that same June 7 order, the commission said PacifiCorp failed to give customers adequate notice about its intent to seek an increase. The commission ordered the utility to pay customers a one-time \$20 credit for its failure to comply with customer notification requirements set forth in commission rules.

On June 28, PacifiCorp petitioned for reconsideration on the portion of the order relating to the customer credit. Tuesday, the commission granted PacifiCorp’s petition for reconsideration. PacifiCorp seeks an opportunity to present evidence on the issues that arose for the first time with the June 7 order. PacifiCorp said it did not have a chance, during previous hearings, to address the issue regarding the alleged failure to notify customers. PacifiCorp is also claiming that the rule requiring regulated utilities to provide customer notification of possible increases, through bill stuffers, did not apply to PacifiCorp in this instance because the utility’s request was for a temporary two-year surcharge and not a permanent rate increase.

PacifiCorp’s petition has nothing to do with the BPA credit granted PacifiCorp customers, which was part of the same June 7 order.

The commission will conduct a hearing on PacifiCorp’s petition on Sept. 10 at 9:30 a.m. in the commission hearing room, 472 W. Washington St.

Also Tuesday, the commission denied petitions for reconsideration from Timothy Shurtz and Stanley Searle to the same June 7 order. The commission said Shurtz and Searle did not offer any new evidence or argument that had not already been

considered during the earlier public and technical hearings or in written testimony submitted in the case.

However, in regard to Mr. Searle's complaint about the accessibility of company offices in Shelley, Rexburg, Preston and Lave Hot Springs, the commissioners stated, "We find that the company should review its practices and physical facilities and reduce or eliminate obstacles that may inhibit effective communication with customers."

Copies of Tuesday's order, Order No. 29079, as well as the original order granting PacifiCorp the surcharge, Order No. 29034, can be accessed on the commission's Web site at [www.puc.state.id.us](http://www.puc.state.id.us). Click on "File Room," and then on "Recent Orders and Notices."

Any interested person can file a petition to review Tuesday's interlocutory (not final) Order No. 29079 by no later than Aug. 13. A petition to review may request that the commission rescind, clarify, alter, amend, stay or finalize the order.

Petitions can be filed at commission headquarters at 472 W. Washington St. in Boise or mailed to P.O. Box 83720, Boise, ID, 83720-0074.

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## IDAHO PUBLIC UTILITIES COMMISSION

For Immediate Release / June 6, 2002  
 Case No. PAC-E-02-1, Order No. 29034  
 Contact: Gene Fadness (208) 334-0339

### **PacifiCorp allowed some recovery, but BPA credit keeps rates down**

BOISE – PacifiCorp will be allowed to implement a two-year surcharge on its southeast Idaho customers to recover about \$22.7 million in power supply expenses incurred by the company from Nov. 1, 2000 through Oct. 31, 2001.

The total amount of power supply costs incurred by the company attributable to its southeastern Idaho territory was originally \$49 million. However, \$11 million of those costs were incurred before PacifiCorp's authorized period of deferral began on Nov. 1, 2000. In January of this year, PacifiCorp applied for recovery of the remaining \$38 million.

Settlement negotiations between PacifiCorp, commission staff, the Idaho Irrigation Pumpers Association and Monsanto Company resulted in a settlement of \$25 million. "When viewing the company's total power purchases, the settlement represents a 50/50 sharing between customers and the utility," the commissioners said.

However, the actual surcharge will recover \$22.7 million as the result of the acceleration of a credit allowed customers when PacifiCorp merged with ScottishPower in 1999. The last two years of the four-year credit were accelerated to provide a benefit of \$2.3 million to customers. Accelerating the credit is not loss of the credit, commissioners emphasized, but ensures customers will get the full value of the credit earlier.

Customers will also receive a one-time credit of \$20 as a result of the company's failure to properly notify customers through a bill stuffer of its application to the commission to recover power supply costs.

Commissioner Dennis Hansen dissented on portions of the order dealing with the confidential nature of the settlement discussions.

This order issued today completes a case that was handled in two parts.

Last February, PacifiCorp's residential and small-farm customers received a credit from the Bonneville Power Administration that resulted in decreases of about 44 percent to residential bills and 63 percent for small-farm customers. That credit was the result of negotiations between BPA and public utility commissioners in Idaho, Montana, Oregon and Washington. The credit is designed to pass on the benefits of the federal Columbia River Power System to PacifiCorp's qualifying residential and small-farm customers in eastern Idaho.

The second part of the case, concluded today, dealt with, among other issues, PacifiCorp's request to

recover \$38 million in power supply costs. The negotiated settlement of a \$22.7 million surcharge, combined with the BPA credit, has the net effect of reducing average residential rates about 28.2 percent from customer bills a year ago. Small-farm customers net a 28 percent decrease from a year ago, including the BPA credit, and will get an additional 11 percent next year. Large commercial customers net a 34 percent decrease from last year's rates while some customers in commercial and industrial classes will receive, at most, a 4 percent increase.

The drought and the volatile energy market, combined with the failure of one of the company's major generation units at Hunter, Utah, caused the company to be short on power supply. That forced the company into the high-priced wholesale market to purchase power. After shareholders had borne \$11 million of those costs, the company asked the commission to begin a deferral period. The deferred amount of about \$38 million was considered in this case.

PacifiCorp customers, unlike any others in the Northwest, actually received some benefit as the result of last year's drought and extremely high wholesale market prices.

That same volatile market compelled the Bonneville Power Administration, also short on power to supply its customers, to offer PacifiCorp a cash settlement instead of providing PacifiCorp the power it was due from BPA. PacifiCorp's quick response resulted in an additional \$11.5 million for PacifiCorp's Idaho customers. No other Idaho electric utility was able to secure this additional benefit for its customers because the market prices for power fell and BPA withdrew the settlement offers. "The settlement came about as a result of the very same market conditions that were responsible for PacifiCorp's unprecedented level of purchased power expenses," the commissioners said.

Because the commission wanted PacifiCorp's Idaho customers to benefit immediately from the BPA credit, that portion of PacifiCorp's application was implemented last February. Commissioners realized at the time that the more time-consuming consideration of PacifiCorp's application to recover power purchase costs could result in yet another adjustment to customer bills, which does occur with today's order.

Despite that adjustment, the BPA credit will continue to be reflected as a separate line item on a customer's bill. "The BPA credit in the full amount remains intact and is unaffected by our order today," the commission said. The two-year surcharge to recover the \$22.7 million will also appear as a separate line item on customer bills.

The commissioners cautioned PacifiCorp's customers to not become accustomed to the size of the BPA credit. "This exchange benefit is temporary and customers would be wise to explore options" to reduce their future use, the commissioners said. "In doing so, they will be prepared when the BPA credit no longer includes the additional financial benefits that resulted from the volatile wholesale market."

While supporting the portion of the application that includes the BPA credit, nearly all of the PacifiCorp customers attending public hearings and workshops in Rigby and Preston opposed the power purchase cost recovery portion of the company's application.

In written comments and in oral testimony, many customers expressed the view that executives of the utility promised not to raise rates for three to five years after the 1999 merger of PacifiCorp with ScottishPower.

At hearings, customers repeatedly referred to a cabin meeting with PacifiCorp executives and elected officials during which utility officials allegedly made significant promises regarding future treatment of expenses.

“However, because these promises from the cabin meeting were never made known to the commission and placed in the merger case record, they were not considered then, and we are legally unable to consider them now,” the commissioners said. The commission, as a quasi-judicial body, must confine its decisions to the record produced at hearings. “Failing to do so, we violate procedural due process of law,” the commissioners said. “While this commission can appreciate the anger of the company’s customers, we are bound by previous orders and the evidence of record that these decisions rested upon.”

Some customers confused those perceived promises with Merger Condition No. 2, a condition imposed by the commission when the merger between PacifiCorp and ScottishPower was approved in November 1999. That condition prohibited the utility from seeking a rate increase for two years after the merger, or before Jan. 1, 2002. “That condition, coupled with the merger credit, was intended solely to result in a rate reduction that would last through January 1, 2002,” the commissioners said.

Some PacifiCorp customers were of the opinion that because the power supply expenses that are part of today’s order were incurred during that two-year period, the company was in violation of the merger condition.

However, in a split decision issued last April, the commission ruled that the company did not violate the merger condition because it did not seek to increase rates before Jan. 1, 2002. Further, the power purchase expenses were not merger-related expenses and largely beyond the control of the company, the commissioners said.

“The word ‘freeze’ was never used in that Order and there was no mention of expenses during the moratorium being disallowed in future recovery,” the commissioners said. “In fact, that condition clearly anticipated that rates could go up after Jan. 1, 2002.”

The company could not have anticipated the unprecedented price spike in the wholesale market in late 2000 through mid-2001, the commissioners said. “Similar expenses were incurred by every utility in the Western interconnection, both public and private, including Idaho Power Company and Avista Utilities.”

Some customers argued that PacifiCorp be prohibited from recovering the power costs incurred as the result of the outage of the Hunter generation plant. The reason for the November 2000 failure has not been determined with any certainty in this case nor in any of the other PacifiCorp states where this matter has been litigated.

In his dissent, Commissioner Dennis Hansen said the negotiated settlement is not specific enough about how much in costs are allocated to the Hunter plant failure, nor does the settlement provide details on any other costs that led to the agreed upon amount of \$25 million.

“I cannot, in all honesty, determine that this settlement is in the public interest when so very little information was provided to the commission regarding what constitutes the settlement,” Hansen said. “I believe this settlement amount was taken out of the hands of the commission and I cannot accept this proposal on blind faith.”

Hansen also stated that PacifiCorp could have done more to reduce the deferred amount, such as interrupting service to its largest customer, Monsanto Company.

In their majority opinion, Commission President Paul Kjellander and Commissioner Marsha Smith said the settlement does not attempt to assign blame or allocate a specific percentage of cost sharing for Hunter. “The settlement provides a negotiated recovery figure and not a road map to determine how the figure was

determined,” the majority opinion stated. “Settlement negotiations of parties, under commission procedural rules are, by their very nature, confidential,” commissioners said.

In his dissent, Commission Hansen said a commission rule specifies that the commission is not bound by settlements and “will independently review,” any settlement proposed. “It is my opinion that this settlement hides issues that perhaps ought to be aired before the settlement is declared to be in the public interest.”

“The commission lacks sufficient evidence about the many important issues that were specifically called for in the order,” Hansen said.

Many of those who testified at the hearings criticized the negotiations that resulted in the proposed settlement as a process that failed to provide an opportunity for public participation. Even though the settlement was completed before the public hearings, the commission reserved making judgment as to the reasonableness of the settlement until after the public hearings concluded.

Intervenors involved in the settlement negotiations, including representatives for irrigators, Monsanto and commission staff, supported the final result. One intervenor, Tim Shurtz, did not sign the stipulation.

Representatives of the Idaho Irrigation and Pumpers Association said, “The agreed upon net recovery of approximately \$22.7 million in excess power costs is reasonable and appropriate given the risks of a less favorable result, the Irrigators limited resources, and in light of other settlements reached in other jurisdictions on this issue.”

Comments filed by Monsanto Company said, “Monsanto is mindful that the commission has allowed Idaho Power and Avista to recover excess power supply costs incurred under similar circumstances.” As a result of the settlement, “parties achieved a known and certain result, eliminated risks and avoided the time and expense of a contested hearing. As in any compromise, the opportunity of achieving a better result was foregone, while the risks of a worse result avoided,” Monsanto said.

In his dissent, Commissioner Hansen noted that Monsanto’s rates are unaffected by this case.

In some cases, a negotiated settlement is the preferred outcome, the commissioners said. “It is certainly often a better use of party (intervenor) and commission resources.”

However, commissioners did agree with customers that the company failed to provide adequate notice of its application, leaving some with little time to prepare for hearings. Commissioners noted that the company did not comply with a commission rule to provide each customer with individual notice through bill stuffers or a comment page with the customer’s bill.

While failure to comply with the notice requirements creates no due process or other procedural rights in customers, “we find it is a serious violation of a commission rule,” the commissioners said. For failure to provide notice, the commission is requiring the company to provide each customer with a credit of \$20 or a total of \$1,087,720. The company can prorate the credit over a 90-day period, but the full credit must be provided within 90 days.

“In crafting this credit regarding notice failure, the commission intends to send a strong signal to the company that it needs to be more responsible in its communication with customers,” the commissioners said.

The final settlement also includes modifications to the revenue requirement from irrigation customers that bring those customers closer to their actual cost of service. Because the cost-of-service study came at the same time as the BPA credit, irrigation rates will not increase even though the revenue requirement from that class of

customers is higher.

A "rate mitigation adjustment," that is also part of the settlement, reduced the impact of the power supply cost by spreading recovery over two years.

A copy of the complete order, as well as Commissioner Hansen's dissent, will soon be available on the commission's Web site at [www.puc.state.id.us](http://www.puc.state.id.us). Click on "File Room," in the upper left-hand corner and then click on "Recent Orders and Notices." Scroll down to Case No. PAC-E-02-1, Order No. 29034. For those who do not have access to the Web site, copies of the order can be obtained by contacting Jean Jewell, commission secretary, at 334-0338 or by requesting them in writing to P.O. Box 83720, Boise, ID, 83720-0074 or by FAX at 334-3762.

Petitions for reconsideration must be filed by no later than June 28, 2002. Petitions can be delivered to the commission's offices at 472 W. Washington St. in Boise or sent to the above street address or FAX number.