(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

|  |  |  |
| --- | --- | --- |
| IN THE MATTER OF THE APPLICATION OF PACIFICORP FOR AN EXEMPTION TO THE ISSUANCE OF SECURITIES PURSUANT TO IDAHO CODE § 61-909. | )))))) | CASE NO. PAC-E-98-2 ORDER NO.  27583 |

On April 30, 1998, PacifiCorp (dba Utah Power & Light Company) filed an Application requesting an exemption from the securities issuance procedures required by Chapter 9 of the Public Utilities Law, Title 61, Idaho Code.  More specifically, the Company sought an exemption from the requirements of Idaho Code §§ 61-901 and -902 “for the proposed issuance and sale by the Company for cash from time-to-time, of not more than 45,000,000 shares of its common stock.”  Application at 1.  The Company filed the requisite securities fee and requested that the exemption remain in effect until all the shares had been issued and sold.  Although the Company initially requested an effective date of June 12, 1998, PacifiCorp subsequently requested that the effective date be postponed until June 19, 1998.  After reviewing the Application and the Commission Staff’s analysis, we grant the exemption as discussed below.

THE APPLICATION

PacifiCorp is an Oregon corporation having its principal administrative office in Portland, Oregon and serves approximately 50,000 customers in southeastern Idaho.  In its Application, PacifiCorp requested two actions.  First, the Company sought authority to issue and sell 45,000,000 shares of its common stock.  Second, the Company requested that it be exempted from the requirements of Idaho Code §§ 61-901 and -902.  These sections establish procedures that utilities must follow before issuing securities.

PacifiCorp maintained that if the entire 45,000,000 shares of stock were issued, it would represent only approximately 13% of the Company’s outstanding common stock, assuming no other transactions in the common stock.  The Company suggested that the issuance of the stock will strengthen its capital structure because the proposed issuance would only be for cash.  Proceeds from the sale of the common stock may be utilized for general utility purposes including improvement or maintenance of services or facilities, construction purposes, acquisition of utility property, or to reimburse the Company’s treasury.

The Company stated that the issuance of its common stock and the request for the exemption is consistent with the public interest.  It asserted that granting the request for exemption “would not constitute the determination of the Commission of any utility ratemaking issues whatsoever or acceptance of the expenditures of the Company for any purposes.  Those matters would be reserved for decision until they are presented to the Commission in appropriate proceedings.”  Application at 3.  In addition, the Company offered to provide periodic reports of the issuance of the common stock so that the Commission and the Staff could monitor the stock transactions.   In this manner, the Commission and Staff would be able to make inquiries or to obtain additional information as appropriate.  The Company requested that the exemption remain in effect until all of the 45,000,000 shares have been issued and sold.

DISCUSSION

The procedures governing the issuance of securities and other financial instruments for public utilities regulated by this Commission are found in Title 61, Chapter 9, of the Public Utilities Law, Idaho Code §§ 61-901 and et seq.  Generally, these statutes require that public utilities obtain the authorization of the Commission before issuing securities.  In 1997 the Legislature enacted Idaho Code § 61-909 granting the Commission authority to exempt certain security transactions from the provisions of Chapter 9.  More specifically, the new statute provides that the Commission

may from time to time by order or rule, and subject to such terms and conditions as may be prescribed therein, exempt any security or any class of securities for which an application is required under this  chapter or under any public utility or class of public utilities from the provisions of this chapter if it finds that the application thereof for such security, class of security, public utility or class of public utility is not required by the public interest.

Idaho Code  § 61-909.

As set out in its Application, PacifiCorp believes that the granting of the exemption is consistent with the public interest.  The Commission Staff agreed and has recommended that the Commission grant the requested exemption.  Staff stated that it routinely monitors the financial condition of PacifiCorp.  If future events adversely affect the financial condition of PacifiCorp, then the Staff could file a petition requesting that the Commission review the exemption for the remaining unissued and unsold shares.

Procedural Rule 144 provides that the Commission may consider applications to issue securities without conducting a hearing.  IDAPA 31.01.01.144.  Based upon the assertions contained in the Application, the Staff’s analysis and Idaho Code § 61-909, the Commission finds that granting the exemption to PacifiCorp is consistent with the public interest.  The Commission further finds that the periodic reports to be filed by PacifiCorp and the Staff’s monitoring of the Company’s financial condition further support the granting of the exemption.  Accordingly, the Commission concludes  that it is reasonable to grant PacifiCorp an exemption from the provisions of Idaho Code §§ 61-901 and -902 from the issuance and sale of the subject 45,000,000 shares of common stock until such time as all shares have been issued and sold.

O R D E R

IT IS THEREFORE ORDERED that the issuance and sale of the 45,000,000 shares of its common stock is authorized.  The Company’s request that it be exempted from the provisions of Idaho Code §§ 61-901 and 61-902 is also granted.

IT IS FURTHER ORDERED that the exemption shall remain in effect until all of the shares have been issued and sold.  The authority to issue the subject shares and the exemption granted in this Order shall be effective June 19, 1998.

IT IS FURTHER ORDERED that the Company shall file periodic reports of its issuance of common stocks substantially in the form submitted in the Application.

IT IS FURTHER ORDERED that the exemption granted in this Order does not constitute the determination of the Commission of any utility ratemaking issue whatsoever or the acceptance of the expenditures of the Company for any purpose.  Such matters are reserved for decision until they are presented to the Commission in appropriate proceedings.

IT IS FURTHER ORDERED that nothing in this Order shall be construed to obligate the state of Idaho to pay or guarantee in any manner whatsoever any security issued, assumed or guaranteed by PacifiCorp.

THIS IS A FINAL ORDER.  Any person interested in this Order (or in issues finally decided by this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order.  Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration.  See Idaho Code § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of June 1998.

                                                                                                                                       DENNIS S. HANSEN, PRESIDENT

                                                                                            RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

vld/O:PAC-E-98-2.dh

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

|  |  |  |
| --- | --- | --- |
| IN THE MATTER OF THE APPLICATION OF PACIFICORP FOR AN EXEMPTION TO THE ISSUANCE OF SECURITIES PURSUANT TO IDAHO CODE § 61-909. | )))))) | CASE NO. PAC-E-98-2 ORDER NO.  27583        ERRATA |

On pages 1-2 of Order No. 27583 issued June 18, 1998, the last sentence on the first page and continuing to the second page reads:

“Proceeds from the sale of the common stock may be utilized for general utility purposes including improvement or maintenance of services or facilities, construction purposes, acquisition of utility property, or to reimburse the Company’s treasury. ”

This sentence should read:

“Absent the exemption requested by the Company,proceeds from the sale of the common stock may be utilized only for general utility purposes including improvement or maintenance of services or facilities, construction purposes, acquisition of utility property, or to reimburse the Company’s treasury. ”

DATED at Boise, Idaho this day of June 1998.

Myrna J. Walters

Commission Secretary

vld/O:PAC-E-98-2.DH:p5

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

June 18, 1998