DECISION MEMORANDUM

TO:COMMISSIONERHANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

MYRNA WALTERS

STEPHANIE MILLER

DAVID SCHUNKE

DON HOWELL

BEVERLY BARKER

DAVID SCOTT

TONYA CLARK

WORKING FILE

FROM:TERRI CARLOCK

DATE:JUNE 11, 1998

SUBJECT:PACIFICORP APPLICATION FOR EXEMPTION UNDER

IDAHO CODE §  61-909; CASE NO. PAC-E-98-2.

RECOMMEND:APPROVAL

On April 30, 1998, PacifiCorp filed an Application requesting an exemption from the provisions 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 (shares).”  PacifiCorp requests that the exemption remain in effect until all shares have been issued and sold.  Application at 1.  The Company initially requested an effective date of June 12, 1998, but given the Commission’s schedule, postponed the effective date until June 19, 1998.  The Company has filed the requisite fee for issuance of the securities.

The Commission’s authority over securities and other financial instruments issued by public utilities is found in Chapter 9 of Title 61 (Idaho Code §§ 61-901 et seq.)  In 1997, the Legislature added another section to this chapter granting the Commission authority to exempt certain security transactions from the provisions of Chapter 9.  More specifically, Idaho Code § 61-909 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 any public utility or class of public utility from the provisions of this chapter if it finds that the application thereof to such security, class of securities, public utility or class of public utility is not required by the public interest.

PacifiCorp believes the granting of the exemption is consistent with the public interest.  The issuance of all the shares currently represents approximately 13% of the outstanding common stock.  Staff finds no evidence to show that it is not in the public interest to grant the exemption.  Staff monitors the financial condition and changing events of PacifiCorp.  If future events change the financial condition of PacifiCorp where the exemption of unissued and unsold common shares would no longer be warranted, a request for review would have to be filed by the Staff or another party.

The proposed issuance will be for cash strengthening the capital structure.  These proceeds may be utilized for general utility purposes including improvement or maintenance of service or facilities, construction purposes, acquisition of utility property or to reimburse Company’s treasury.  “... the exemption would not constitute the determination of the Commission of any utility rate making issues whatsoever or acceptance of the expenditures of the Company for any purpose.  Those matters would be reserved for decision until they are presented to the Commission in appropriate proceedings.”  Application at 3.  PacifiCorp will provide reports of its issuances of common stock to the Commission.

STAFF RECOMMENDATION

Staff recommends approval of the exemption from the provisions of Idaho Code

§§ 61-901 and -902 to issue and sell not more than 45 million shares of common stock.  Staff recommends that the exemption remain in place until all shares are issued and sold unless subsequent events and changes in financial position warrant the exemption be ended.  Under these conditions the Staff or another party would have to file a case requesting the review of further exemption of unissued and unsold shares.

COMMISSION DECISION

Should the exemption from the provisions of Idaho Code §§ 61-901 and -902 be granted authorizing PacifiCorp to issue and sell not more than 45 million shares of common stock?

Should the exemption remain in place until all shares are issued and sold absent a request for review?

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TC:pac\pace982.698Terri Carlock