

Decision 01-12-013 December 11, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PacifiCorp (U 901-E) for
Exemption from the Acquisition of Control of A
Public Utility Requirements of Cal. Pub. Util.
Code Sec. 854.

Application 01-04-034
(Filed April 24, 2001)

**OPINION AUTHORIZING REORGANIZATION AND
GRANTING EXEMPTION FROM THE REQUIREMENTS
OF SECTION 854 OF THE PUBLIC UTILITIES CODE**

In the instant application, PacifiCorp, an indirectly-held subsidiary of ScottishPower, requests that we grant an exemption pursuant to § 853(b) of the Pub. Util. Code from the requirements of § 854(a), which applies to mergers and other forms of reorganization that result in a change of control over a public utility regulated by this Commission. The transaction for which the exemption is sought is the proposed transfer of all of the common stock of PacifiCorp from NA General Partnership (NAGP), a Nevada partnership indirectly controlled by ScottishPower, to a newly-formed non-operating Delaware holding company, PacifiCorp Holdings, Inc. (PHI), that is also an indirect subsidiary of ScottishPower.

Although PacifiCorp takes the position that § 854(a)¹ does not apply to this type of transaction—an argument we previously accepted in Decision (D.) 99-06-049—it requests that in order “to avoid controversy and facilitate prompt closing of the transaction,” we issue an order pursuant to our authority under § 853(b)² holding the proposed transaction exempt from the requirements of § 854(a). In the alternative, PacifiCorp requests that we approve the proposed transaction under § 854(a).³

¹ Section 854(a) provides in pertinent part:

"No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission. The commission may establish by order or rule the definitions of what constitutes merger, acquisition, or control activities which are subject to this section. Any merger, acquisition or control without that prior authorization shall be void and of no effect."

² Section 853(b) provides in full:

"The commission may from time to time by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article [*i.e.* Pub. Util. Code §§ 851-856] if it finds that the application thereof with respect to the public utility or class of public utility is not in the public interest. The commission may establish rules or impose requirements deemed necessary to protect the interest of the customers or subscribers of the public utility or class of public utility exempted under this subdivision. These rules or requirements may include, but are not limited to, notification of a proposed sale or transfer of assets or stock and provision for refunds or credits to customers or subscribers."

³ As the application points out, §§ 854(b) and (c) require extensive findings if any utility that is a party to a § 854(a) transaction has gross annual California revenues exceeding \$500 million. The application states that PacifiCorp's gross annual California revenues

Footnote continued on next page

In its application, PacifiCorp states that the purpose of the transaction is to separate PacifiCorp's utility operations from its unregulated, non-utility businesses, a "separation [that] will reduce the exposure of the regulatory side of PacifiCorp's business to any adverse results in its non-utility operations" (Application, p. 11.) This appears to be the kind of transaction for which the § 853(b) exemption was intended, and does not appear adverse to the public interest. Accordingly, we will grant the application.

A. Background and Nature of the Application

PacifiCorp is an Oregon corporation that holds certificates of public convenience and necessity (CPCNs) from this Commission to offer electric service in the counties of Modoc, Del Norte, Siskiyou and Shasta in Northern California. However, the approximately 41,000 retail customers that PacifiCorp serves in these counties account for only 3.3 per cent of the retail customers served system-wide by PacifiCorp; the other customers are located in the states of Oregon, Washington, Idaho, Utah and Wyoming. Applications seeking approval of the proposed reorganization have been filed with the public service commissions in four of these states,⁴ as well as with the Federal Energy Regulatory Commission (FERC), and all of these agencies have given their approval.

are less than this amount, and that neither NAGP nor PHI has any California revenues. Thus, §§ 854(b) and (c) are inapplicable here.

⁴ According to the application, PacifiCorp is required to give notice of the transaction to the Utah Public Service Commission, but is not required to seek that agency's approval. (*Id.* at 9.)

This application is a follow-up to D.99-06-049, in which we approved the application of PacifiCorp to be acquired through a merger by ScottishPower, one of the largest electric utilities in the United Kingdom. The merger took effect on November 29, 1999.

ScottishPower does not hold PacifiCorp directly; rather, all of the common stock of the latter corporation is held by NAGP, a general partnership organized under the laws of Nevada. According to the application, the general partners of NAGP are ScottishPower NA 1 Limited and ScottishPower NA 2 Limited, both of which are direct, wholly-owned subsidiaries of ScottishPower. (*Id.* at 5.)

The application states that “both prior to and since the ScottishPower merger, [PacifiCorp] has been engaged in a number of non-utility activities, principally through PacifiCorp Group Holdings Company (PGHC) and its subsidiaries, all of which are wholly owned.” By this application, PacifiCorp is proposing to separate the ownership of these non-utility businesses from the utility itself. The vehicle for doing so is PHI, a non-operating holding company that was recently organized under the laws of Delaware. The application describes the proposed transaction as follows:

“PHI is . . . a direct, wholly-owned subsidiary of NAGP and an indirect, wholly-owned subsidiary of ScottishPower. Upon consummation of the proposed transaction, NAGP, the current direct holding company of PacifiCorp, will transfer all of the outstanding common stock of PacifiCorp to PHI in exchange for 100 percent of the capital stock of PHI. The PHI shares will constitute the consideration for the shares of PacifiCorp. No other consideration will be involved . . .” (*Id.* at 8.)

After the proposed transfer, PHI will hold both PacifiCorp and PGHC as separate subsidiaries. The application describes the purpose of the transfer as follows:

“The further separation of PacifiCorp’s non-utility businesses from its regulated utility operations, which will be facilitated by the proposed stock exchange, is consistent with the public interest. Specifically, such separation will reduce the exposure of the regulatory side of PacifiCorp’s business to any adverse results in its non-utility operations, to the benefit of PacifiCorp’s customers. The proposed restructuring will also allow ScottishPower to infuse capital into and receive distributions from the non-utility businesses without involving PacifiCorp. In addition, as the restructuring is implemented, PacifiCorp’s consolidated financial statements would no longer include the results of the transferred non-utility businesses, thereby presenting more clearly the results of its utility operations.” (*Id.* at 10-11.)

The application also emphasizes that the proposed restructuring will have no effect on the utility operations of PacifiCorp. On this issue, applicant states:

“The transaction is a simple internal corporate reorganization involving a change in the stock ownership of PacifiCorp. It is not a consolidation of operating utilities with all the regulatory complexities that entails . . . As explained in this Application, no change in operations will result from the transaction, no transfer of assets or [CPCNs] is involved, and the transaction will not have any effects whatsoever on competition, service to customers, or rates. (*Id.* at 6-7.)

Finally, PacifiCorp requests that it be relieved of the filing requirements set forth in Rules 17 and 36 of our Rules of Practice and Procedure, inasmuch as the proposed transaction does not involve a merger.

B. Siskiyou County’s Response to the Application

Notice of the application appeared in the Commission’s Daily Calendar on April 27, 2001. Under Rule 44.1 of our Rules of Practice and Procedure, any protests to the application were required to be filed no later than May 29, 2001.

Although it did not file a protest, Siskiyou County did file a response to the application on May 25, 2001. The response urged that the application should not be approved without an “affirmative finding that the Application is in the best interests of the citizens of Siskiyou County served by the Applicant.” The response also urged the Commission to hold hearings, and argued that the application should not be ruled upon “unless and until” proof of approvals from the other states in which PacifiCorp provides electric service had been presented.

On June 11, 2001, PacifiCorp filed a reply to Siskiyou County’s response. The reply argues that the applicable provisions of the Public Utilities Code do not require a finding that the proposed transaction is in the best interests of the affected Siskiyou customers, and that in any event, the application contains an adequate demonstration of why the relief sought would be in the public interest. PacifiCorp also notes that the Commission used this same analysis in D.99-06-049, the original decision approving the merger with ScottishPower.

C. Nature of the Non-Utility Businesses Now Held by PacifiCorp

Although the application does not describe the nature of the non-utility businesses that would be affected by the proposed transfer of PacifiCorp common stock to PHI, the applicant has furnished this information in response to an inquiry from the assigned Administrative Law Judge (ALJ). On November 21, 2001, counsel for PacifiCorp sent a facsimile of a data response originally furnished to the staff of the Washington Utilities and Transportation Commission (WUTC), one of the four other state public service commissions

required to approve the transaction.⁵ The data response summarizes the status of the non-utility businesses as follows:

“Through subsidiaries, PacifiCorp is involved with non-utility businesses, including financial services and various ownership interests in real estate, technology and other assets. PacifiCorp operates none of these businesses. These activities are principally conducted through subsidiaries of [PGHC], including PacifiCorp Financial Services, Inc. (PFS), PacifiCorp Energy Ventures, PacifiCorp Energy, Inc. [PEI], PacifiCorp Energy Services, Inc., PacifiCorp International Group Holdings Company and others. PacifiCorp plans to transfer some or all of these subsidiaries to PHI over time as conditions warrant.”⁶

According to counsel, the largest and most active of the current PGHC subsidiaries is PacifiCorp Power Marketing (PPM), a wholesale power marketing company. The data response also gives brief summaries of the other non-utility subsidiaries, summaries that were extracted from Exhibit C-7 of the filing that was made with the Securities and Exchange Commission (SEC) on December 6, 2000 as part of ScottishPower’s registration as a holding company

⁵ The WUTC recently approved the proposed transaction with certain conditions. *See*, “Order Approving Corporate Reorganization To Create Holding Company, With Conditions,” Docket No. UE-010594, issued September 26, 2001 (hereinafter referred to as the “WUTC Order”).

⁶ On the issue of who will ultimately control PacifiCorp’s non-utility businesses, the application states:

“In connection with the proposed restructuring, PacifiCorp intends to transfer over time some or all of the non-utility businesses of PGHC and its subsidiaries to PHI, a non-regulated entity. PacifiCorp is not requesting approval for the transfer of PGHC or any of its subsidiaries to PHI, as these transfers are not subject to the Commission’s jurisdiction.” (Application, p. 9.)

pursuant to Section 5 of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79 et seq. According to these summaries, PEI “was formed to provide services to [the] wholesale power market relating to fuel supply, trading, procurement and transportation,” while PFS is a “nonutility holding company

for leveraged leasing, synthetic fuel production, equipment lease and commercial finance asset recoveries, and miscellaneous properties.”⁷

In a November 27, 2001 letter to the assigned ALJ, counsel for PacifiCorp asserts that for two reasons, “there is no ratepayer subsidy of these non-regulated affiliates and there will not be under the proposed new structure.” First, “the capital investment in these affiliates has come from shareholder funds

⁷ It seems clear from the summaries that the importance of these various businesses has changed over time. While PPM is the most important non-utility subsidiary today, that position used to be held by PFS. The data response has the following to say about the change in PFS’s situation:

“PFS is in the process of winding its operation to only the leveraged leasing and tax-advantage investments. In 1989, PFS was a \$2 billion finance company with over 1,000 employees nationwide. Currently, PFS has one full-time employee and has assets of approximately \$320 million, 82% of which are the leverage leasing and tax advantage investments. PFS and its subsidiaries are in the process of winding down the balance of their respective investments.” (Response to WUTC Staff Data Request 1, dated June 8, 2001.)

Other PGHC subsidiaries that were formed to hold foreign utility investments are being wound down, as well. For example, PacifiCorp Bakun Energy BV and PacifiCorp Generation International, BV each used to hold a one-third interest in Philippine Luzon Hydro, but both are now inactive businesses, and PacifiCorp states that it plans to dissolve them by the end of June 2002.

and direct affiliate borrowings, which are neither guaranteed nor supported by PacifiCorp.” Second, counsel states:

“[T]ransactions between PacifiCorp and its affiliates, which might provide an opportunity to use ratepayer funds to subsidize the affiliates, are strictly regulated by PacifiCorp’s state commissions. Oregon statutes and rules, for example, require [Oregon PUC] approval of purchases of goods or services from an affiliate. The transfer pricing rules in Oregon . . . generally require that for ratemaking purposes[,] transactions between PacifiCorp and its affiliates be priced at cost or market, whichever is more favorable to ratepayers. This rule is similar to the affiliate transaction pricing rule in California.”

Counsel concludes that “required compliance with the foregoing conditions, rules and reporting requirements by PacifiCorp’s non-regulated subsidiaries will be unaffected by PacifiCorp’s proposed new structure.”

D. Discussion

Based on the application and additional information furnished by counsel, we are satisfied that—like the PacifiCorp-ScottishPower merger that was at issue in D.99-06-049—this is an appropriate case for exercising our discretion under § 853(b) to exempt the proposed transaction from scrutiny under § 854 of the Pub. Util. Code. Our conclusion is based upon the four factors set forth below.

1. Continuation of PacifiCorp’s Retail Service and Approvals in Other States

Our first reason for granting the exemption is that the proposed transaction does not involve any change in the California operations of PacifiCorp. As a result of the proposed transfer of PacifiCorp common stock from NAGP to PHI, no CPCNs or assets will be transferred, and there will be no change in rates or service to PacifiCorp’s 41,000 California customers.

Second, this transaction has been reviewed and approved by the public service commissions of Oregon, Washington, Idaho and Wyoming, as well as the FERC.⁸ Since the issues raised by the proposed transfer of PacifiCorp stock to PHI do not vary from one state to another, and since none of these other commissions has imposed any significant conditions upon the transaction, these approvals add to our confidence about the reasonableness of the transaction.

2. Compliance with Affiliate Transaction Rules

We are also satisfied that the affiliate transaction rules applicable to PacifiCorp in California and Oregon have been sufficient to ensure that there is no ratepayer subsidization of the non-utility businesses held by PGHC.

This conclusion is based on “affiliated interest reports” and audits that PacifiCorp has filed at this Commission and elsewhere, as well as representations by PacifiCorp’s counsel. As to the representations, PacifiCorp’s counsel has stated in his November 27 letter to the ALJ, as noted above, that “the capital investment in these affiliates [held by PGHC] has come from shareholder funds

⁸ In addition to the WUTC Order cited in footnote 5, the following decisions reflect the approval of the Oregon, Wyoming and Idaho commissions, as well as the FERC, to the transaction:

- Order Authorizing Disposition of Facilities, FERC Docket No. EC01-91-000, 95 FERC ¶61,417, issued June 19, 2001.
- Order No. 01-573, Oregon Public Utility Commission, Docket UM 1021, issued July 10, 2001 (hereinafter referred to as “Oregon Order 01-573”.)
- Notice and Order Granting Application, Wyoming Public Service Commission Docket No. 20000-EA-01-170 (Record No. 6600), issued July 24, 2001.
- Order 28836, Idaho Public Utilities Commission, Case No. PAC-E-01-08, issued August 28, 2001.

and direct affiliate borrowings, which are neither guaranteed nor supported by PacifiCorp.”

As to reports, we have examined the recent Affiliated Interest Reports that PacifiCorp files at this Commission to satisfy its reporting obligations under the utility-affiliate transaction rules that we adopted in 1992,⁹ as well as the audit reports prepared by KPMG that PacifiCorp has submitted to demonstrate its compliance with Affiliate Transaction Rules we adopted in D.97-12-088 (as modified by D.98-08-035).¹⁰

PacifiCorp has been filing Affiliated Interest Reports with this Commission since 1994. The report provides substantial detail about sales of goods and services by PacifiCorp to its affiliates, and vice versa. The report that PacifiCorp files here is the same one that it submits to the Oregon Public Utility Commission (OPUC) to demonstrate compliance with Oregon’s affiliated interest rules,¹¹ the principal provisions of which appear at O.A.R. §§ 860-038-0580 and 860-038-0600. The former rule sets forth Oregon’s transfer pricing policy, which is very similar to our own transfer pricing rules as set forth in Appendix A of D.93-02-019.

⁹ The 1992 rules governing the reporting of transactions with utility affiliates are set forth in Appendix A to D.93-02-019, 48 CPUC2d 163. *See*, 48 CPUC2d at 171-180.

¹⁰ As D.97-12-088 notes, there is some overlap between the rules adopted in that decision and the 1992 rules set forth in Appendix A to D.93-02-019. *See*, 77 CPUC2d at 479-481.

¹¹ The Affiliated Interest Report that PacifiCorp submits to OPUC is also filed with the commissions in all of the other states where PacifiCorp provides retail service.

The Oregon commission believes that its affiliated interest rules and reporting requirements have been efficacious in discouraging cross-subsidization. In its recent order approving the proposed transfer of PacifiCorp common stock to PHI, OPUC included a memorandum from its staff noting that OPUC “did not impose a requirement in its approval of the ScottishPower/PacifiCorp merger that PacifiCorp transfer its non-utility businesses to an unregulated affiliate. The Commission believed that its affiliated interest statutes and regulations were sufficient to provide Oregon customers with the necessary safeguards against cross-subsidization.” (Oregon Order 01-573, Appendix A, p. 2.)

The KPMG audits submitted by PacifiCorp also do not raise concerns about improper cross-subsidization of the non-utility businesses held by PGHC. The audit submitted in April 2001¹² indicates that PacifiCorp now has only two California affiliates impacted by our 1998 rules, Maxwell Energy Products, Inc. (Maxwell) and PPM.¹³ Maxwell engages in research and development (R&D) regarding ultra-capacitor storage for handheld and wireless applications; according to the report, none of this R&D involves energy storage that would be

¹² The scope of the audit report prepared by KPMG in 2000 and 2001 is considerably narrower than the scope of the report prepared in 1999. The reason for this appears to be that, pursuant to the procedure set forth in Section II.H. of the Affiliate Transaction Rules, PacifiCorp filed an application in March 1999 seeking an exemption from some of the rules on the ground that it is “a California utility which is also a multi-state utility and subject to the jurisdiction of other state regulatory commissions.” The application was granted with certain exceptions in D.99-10-049.

¹³ The 2001 audit notes that two affiliates discussed in the April 2000 audit report, en.able and Orcom Solutions, are no longer relevant, because PacifiCorp closed en.able in 1999 and sold its interest in Orcom Solutions in 2000.

relevant to PacifiCorp's electric distribution, transmission and generation business. While PPM sells electric power on a wholesale basis in the western U.S., the report states that PPM has no California sales, and that PacifiCorp interacts with it only for "internal business" purposes such as human resources and training. On the basis of these limited affiliate activities,¹⁴ the 2001 audit concludes:

"Although we found PacifiCorp has not complied in full regarding Rule VII of the Affiliate Transaction Rules, we believe PacifiCorp is at very low risk of acting in a non-competitive manner regarding its California service territory. The lack of ESPs [in PacifiCorp's California service territory], the lack of active Rule II.B affiliates, and the ongoing efforts to sell its California service territory point to a minimal risk to California's competitive electricity markets. Further, PacifiCorp continues to reduce the number of its subsidiaries and to focus on its core business as a utility distribution company serving portions of six different states."

Even though our review of the Affiliated Interest Reports and the KPMG audits give us confidence that ratepayer subsidization of the non-regulated businesses held by PGHC is not an issue here, we will require PacifiCorp to provide us with the same type of notice regarding transfer of these businesses that was required by the WUTC. The WUTC Order approving the transfer of PacifiCorp stock to PHI included the following condition:

¹⁴ The audit report also notes that another PGHC subsidiary, PacifiCorp Energy Ventures, Inc., has invested in a venture capital fund that has made investments in

several companies with sales in California. However, the report continues, "none of these companies can be considered Rule II.B. affiliates because PacifiCorp has less than a five percent ownership interest in any one of them."

“Staff indicated a concern related to the divestiture of subsidiaries of [PacifiCorp] to PHI. In general Staff’s concern was not that [PacifiCorp] intends to separate its utility activities from its non-utility activities, but rather, that some of the subsidiaries of [PacifiCorp] either perform activities as part of or in conjunction with the utility, or utilize property or employees common to the utility operations. Staff proposed, and the company did not object, that the Company should be required to notify the Commission prior to the transfer of a subsidiary or other business activity to PHI. Such notice should include the name of the subsidiary, the business conducted, transactions between the business entity and [PacifiCorp’s] utility activities, identification of common employees (officers included) among the business and [PacifiCorp’s] regulated activities, and identification of property jointly owned by the business entity and Pacific’s regulated activities.” (WUTC Order, p. 2, ¶10.)

3. Preservation of the ScottishPower/PacifiCorp Merger Conditions

Our final reason for granting this application is that the proposed transfer of PacifiCorp common stock from NAGP to PHI would not adversely affect this Commission’s regulatory authority over PacifiCorp, since the conditions that PacifiCorp and ScottishPower accepted in order to obtain our consent to their 1999 merger remain in effect. The principal conditions¹⁵ are set forth in Ordering Paragraph (OP) 2 of D.99-06-049 and provide as follows:

¹⁵ In addition to the six conditions quoted in the text, two others were imposed pursuant to a joint petition to modify D.99-06-049 filed by PacifiCorp, ScottishPower and the Office of Ratepayer Advocates. The joint petition was granted in D.99-10-059. The two additional conditions are set forth in OP 2 of D.99-10-059 and read as follows:

- “Following Commission approval of the application and following the closing of the merger, the applicants will propose in PacifiCorp’s next PBR proceeding the

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- “ScottishPower and PacifiCorp agree that in their management and operation of PacifiCorp in the state of California they will comply with the Commission’s rules and regulations regarding public utilities and their affiliates.”
- “To determine the reasonableness of allocation factors used by ScottishPower to assign costs to PacifiCorp and amounts subject to allocation or direct charges, the Commission may audit the accounts of ScottishPower and its affiliates which are the bases for charges to PacifiCorp. ScottishPower and PacifiCorp agree to cooperate fully with such Commission audits.”
- “ScottishPower and PacifiCorp will provide the Commission access to all books of account, documents, and data of ScottishPower or its affiliates that pertain to transactions between PacifiCorp and ScottishPower or its affiliates.”
- “PacifiCorp will maintain its own accounting system, separate from ScottishPower’s accounting system. PacifiCorp financial books and records will be kept in the United States.”
- “ScottishPower and PacifiCorp will make their officers and employees, and those of their affiliates, available to appear and testify, as necessary or required in Commission proceedings, in connection with future transactions between PacifiCorp and ScottishPower or its affiliates, and will bear the associated costs.”

adoption of a financial incentive and penalty mechanism tied to the achievement of service standards to be agreed to at that time.”

- “PacifiCorp and ScottishPower commit to continued, active participation in the Commission’s reliability rulemaking, R.96-11-004.”

- “If PacifiCorp sells or transfers its California distribution system, ScottishPower and PacifiCorp agree that PacifiCorp will first apply for an order of the Commission authorizing such sale in accordance with Public Utilities Code Section 851.”¹⁶

These conditions have been agreed to by formal resolutions of the Boards of Directors of both PacifiCorp and ScottishPower, and by preserving this Commission’s power to conduct audits and to obtain access to the books and records of ScottishPower and its affiliates that relate to transactions with PacifiCorp, they serve to protect California ratepayers. Particularly when read in conjunction with limitations on PacifiCorp’s capital structure imposed in other states,¹⁷ they help to ensure that even without earnings from the non-utility

¹⁶ In D.00-12-048, this Commission dismissed PacifiCorp’s application to sell its California distribution assets, CPCNs and certain transmission assets to the Nor-Cal Electric Authority (Nor-Cal) and the Jefferson Public Power Authority (Jefferson). The principal grounds for the dismissal were that (1) a Superior Court judgment had held that Del Norte County, one of the two members of Jefferson, lacked the legal power to sell electric power on a retail basis, and (2) the legality of alternative arrangements the parties had negotiated had not been determined. However, D.00-12-048 noted that PacifiCorp was free “to file a new and complete application so that the Commission can decide applicant’s transfer proposal on its merits.” (*Mimeo.* at 9.)

On November 1, 2001, PacifiCorp and Nor-Cal announced that they had reached an agreement in principle for the sale of above-noted PacifiCorp assets to Nor-Cal. The parties expect to finalize their agreement and file an application seeking this Commission’s approval of the transaction in January 2002. *See*, www.pacificorp.com/pages/Navigation6288.html; *California Energy Markets*, November 2, 2001, page 2, ¶9.

¹⁷ For example, the 1999 decision of the OPUC approving the merger between PacifiCorp and ScottishPower includes conditions requiring that PacifiCorp’s common equity capital be maintained at certain levels, and that PacifiCorp not seek a higher cost of capital on account of its merger with ScottishPower. The conditions are included in a stipulation entered into by PacifiCorp, ScottishPower, the Citizens’ Utility Board and

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businesses now held by PGHC, PacifiCorp will be assured of sufficient capital to continue providing adequate service to its California customers.

However, in order to remove any doubt about the obligations of PHI in this matter, we will require, as a condition of exempting from review under

the staff of the OPUC, which is referred to in the decision as Stipulation 5. Exhibit 1 to Stipulation 5 sets forth 24 conditions agreed to by the parties, of which the sixth and seventh provide as follows:

“6. PacifiCorp shall not make any distribution to ScottishPower that will reduce PacifiCorp’s common equity capital below the corresponding threshold percentage of PacifiCorp’s total capital without Commission approval, as detailed in the following table. PacifiCorp’s total capital is defined as common equity, preferred equity and long-term debt. Long-term debt is defined as debt with a term of one year or more.

<u>Year</u>	<u>Threshold Common Equity Percent</u>
After December 31, 1999	35%
After December 31, 2000	36%
After December 31, 2001	37%
After December 31, 2002	38%
After December 31, 2003	39%

After December 31, 2004, PacifiCorp shall not make any distribution to ScottishPower that will reduce PacifiCorp’s common equity capital below 40 percent of total PacifiCorp capital without Commission approval. The Commission Staff and PacifiCorp may reexamine this minimum common equity percentage as financial conditions or accounting standards change, and may request that it be adjusted.”

“7. ScottishPower and PacifiCorp agree that in future Commission proceedings, they will not seek a higher cost of capital than that which PacifiCorp would have been authorized on its own. Specifically, no capital financing costs (either debt or equity) should increase by virtue of the fact that PacifiCorp was merged with ScottishPower.” (Order 99-616, OPUC Docket No. UM 918, issued October 6, 1999, Appendix-Stipulation 5, page 6.)

§ 853(b) the proposed transfer of PacifiCorp common stock from NAGP to PHI, that the Board of Directors of PHI adopt a resolution accepting the conditions set forth in OP 2 of D.99-06-049 and OP 2 of D.99-10-059.

4. Conclusion

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

In Resolution ALJ 176-3063, dated May 14, 2001, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that a hearing was necessary. In view of the fact that no protests have been filed and that the record before us is adequate, a public hearing is not necessary, and to this extent we alter the preliminary determination made in Resolution ALJ 176-3063.

Findings of Fact

1. While the proposed transfer of the common stock of PacifiCorp from NAGP to PHI would involve a formal change of control of PacifiCorp, it would not involve a consolidation of operating utilities, a change in rates or utility tariffs, or a sale or transfer of utility property or CPCNs.
2. The proposed transaction has been reviewed and approved without significant condition by the public service commissions in the states of Oregon, Washington, Idaho and Wyoming, as well as the FERC.
3. The proposed transaction would reduce the exposure of PacifiCorp from adverse results in the non-utility businesses currently operated through PGHC, a PacifiCorp subsidiary.

4. The proposed transaction would enable ScottishPower to infuse capital into and receive distributions from the non-utility businesses currently operated through PGHC without involving PacifiCorp.

5. The proposed transaction would enable PacifiCorp's financial statements to present the results of its utility operations more clearly, inasmuch as said financial statements would no longer include the results of the transferred non-utility businesses.

6. Although Siskiyou County did file a response to the application on May 25, 2001, the application is unopposed.

7. The unregulated, non-utility businesses currently operated through PGHC include wholesale power marketing, financial services, and real estate.

8. PacifiCorp's counsel has represented that the capital investment in the non-utility businesses operated through PGHC has come from shareholder funds and direct affiliate borrowings, which are neither guaranteed nor supported by PacifiCorp.

9. The OPUC's rules against cross-subsidization are similar to those adopted by this Commission.

10. The Affiliated Interest Reports filed by PacifiCorp with OPUC and this Commission do not indicate that PacifiCorp's non-regulated businesses held through PGHC have been improperly cross-subsidized by PacifiCorp's ratepayers.

11. The audit reports prepared by KPMG to determine PacifiCorp's compliance with the Affiliate Transaction Rules adopted in D.97-12-088 (as modified by D.98-08-035) indicate that PacifiCorp has adequately complied with the Affiliate Transaction Rules.

12. PacifiCorp, the only utility that is a party to the proposed transaction, has gross annual California revenues of less than \$500 million.

Conclusions of Law

1. The proposed transfer of PacifiCorp common stock from NAGP to PHI will not adversely affect this Commission's regulatory authority over PacifiCorp, inasmuch as the conditions that PacifiCorp and ScottishPower accepted pursuant to D.99-06-049 (as modified by D.99-10-059) will remain in effect.

2. The conditions imposed on the capital structure of PacifiCorp by other states in connection with their review of the 1999 merger of PacifiCorp and ScottishPower ensure that even without earnings from the non-utility businesses currently operated through PGHC, PacifiCorp will have sufficient capital to continue providing adequate service to its retail customers in California.

3. As a condition precedent to the proposed reorganization, applicant should be required to file with the Energy Division of the Commission, within 60 days after the effective date of this decision, a resolution of the Board of Directors of PHI agreeing to accept and abide by the conditions set forth in OP 2 of D.99-06-049 and OP 2 of D.99-10-059.

4. As a condition precedent to the proposed reorganization, applicant should be required to file with the Energy Division of the Commission, within 60 days after the effective date of this decision, a resolution of its Board of Directors agreeing to give notice to this Commission prior to the transfer to PHI of any non-regulated business now held by PGHC, whether as a subsidiary or otherwise.

5. Because the proposed transaction does not involve a consolidation of operating utilities, a change in utility rates or services, or any sale or transfer of

utility assets or CPCNs, review of the transaction under § 854 of the Pub. Util. Code is not necessary.

6. Subsections 854(b) and (c) of the Pub. Util. Code are inapplicable to this transaction, because no utility that is a party to the proposed transaction has gross annual California revenues in excess of \$500 million.

7. For the reasons set forth in FOFs 1- 2 and 8-11 and Conclusions of Law (COLs) 1-2 and 5, the proposed transaction should be exempted from Commission review pursuant to § 853(b) of the Pub. Util. Code.

8. Applicant should be exempted from the filing requirements set forth in Rules 17 and 36 of the Commission's Rules of Practice and Procedure.

9. This application should be granted subject to the conditions set forth above.

O R D E R

IT IS ORDERED that:

1. Subject to the conditions set forth in Ordering Paragraphs (OPs) 2 and 3, NA General Partnership is authorized to transfer all of the outstanding common stock of PacifiCorp to PacifiCorp Holdings, Inc. (PHI), a Delaware corporation, in exchange for 100 percent of the capital stock of PHI.

2. As a condition precedent to the transfer authorized in OP 1, applicant shall file with the Energy Division of the Commission, within 60 days after the effective date of this order, a resolution of the Board of Directors of PHI agreeing to accept and abide by the conditions set forth in OP 2 of Decision (D.) 99-06-049 and OP 2 of D.99-10-059.

3. As a condition precedent to the transfer authorized in OP 1, applicant shall file with the Energy Division of the Commission, within 60 days after the effective date of this order, a resolution of its Board of Directors agreeing to give

notice to this Commission prior to the transfer to PHI of any non-regulated business now held by PacifiCorp Group Holdings Company, whether as a subsidiary or otherwise. Such notice shall include the name of the non-regulated business, the nature of the business it conducts, a description of all transactions between the non-regulated business and PacifiCorp's utility activities, identification of common employees (officers included) among the non-regulated business and PacifiCorp's regulated activities, and identification of any property jointly owned by the non-regulated business and PacifiCorp's regulated activities.

4. The authorization granted by this decision shall expire if not exercised on or before June 28, 2002.

5. This proceeding is closed.

This order is effective today.

Dated December 11, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners