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BEFORE THE IDAHO PUBLIC UTILITY COMMISSION

IN THE MATTER OF THE JOINT APPLICATION OF HYDRO ONE LIMITED AND AVISTIA CORPORATION FOR APPROVAL OF MERGER AGREEMENT	CASE NOS. AVU-E-17-09 AVU-G-17-05 **COMMENTS OF AVISTA CUSTOMER GROUP**

COMES NOW, Avista Customer Group, (hereinafter "ACG"), through the undersigned counsel of record, pursuant to the Commission's *Order No. 34061* (May 16, 2018), and hereby submits these comments concerning the Application submitted in this matter by Avista Corporation and Hydro One Limited. For the reasons set forth below, ACG requests that the Commission deny the Application.

1. Avista Customer Group.

ACG is an unincorporated nonprofit association, composed of utility ratepayers, taxpayers and concerned citizens, including electrical and natural gas utility service customers of the Co-Applicant, Avista Corporation. ACG members stand to be impacted by potential cost or rate increases resulting from the proposed merger of Avista Corporation with Hydro One Limited. It is these increases that ACG seeks to avoid and which form the basis for denying the Application.

2. Statutory Criteria for Review of Application.

> Before authorizing the transaction, the public utilities commission shall find: (a) That the transaction is consistent with the public interest; (b) That the cost of and rates for supplying service will not be increased by reason of such transaction; and (c) That the applicant for such acquisition or transfer has the bona fide intent and financial ability to operate and maintain said property in the public service. The applicant shall bear the burden of showing that standards listed above have been satisfied.

I.C. § 61-328(3).

3. Overview of Comments.

Numerous written comments, as well as those provided orally at the public hearings, including those by individual ACG members, have raised concerns regarding the proposed merger's consistency with the public interest, as well as the intent and financial ability of the applicant. Those comments will not be repeated here, but are nonetheless important to the Commission's review, deliberations and ultimate decision regarding the proposed merger.

In these comments, ACG focuses on the second of the criteria in the statute: "That the cost of and rates for supplying service will not be increased by reason of such transaction". The Co-Applicants bear the burden of showing that this standard has been meet. As discussed below, they have failed to do so. In fact, they have refused to provide the Commission with information that is necessary in making this determination, most notably the cost allocation methodology for the allocation of costs to Avista and, ultimately, its customers. Instead, they offer to provide the relevant cost information only during the next general rate case, long after the merger transaction has already been approved. That is too late. And it is inadequate to satisfy the burden that they carry in this proceeding.

As further discussed below, this is nothing new for Hydro One, which recently refused to supply cost information to the Ontario Energy Board (hereinafter "OEB"), in connection with Hydro One's proposed acquisition of Orillia Power Distribution Corporation. That acquisition

proposal was denied by OEB in April of this year, due to Hydro One's failure to establish that there would be no harm to Orillia Power ratepayers arising from the proposed transaction. The OEB decision (currently being appealed by Hydro One), attached hereto as Exhibit A, was further informed by recent experiences involving other Hydro One acquisitions – which resulted in significant proposed rate increases for the customers of those acquired companies. Similar concerns now exist for Avista ratepayers as a result of the Application.

This should be contrasted with ScottishPower's acquisition of PacifiCorp nearly twenty years ago, a proposal that was approved by the Commission on a 2-1 vote. A copy of that order is attached hereto as Exhibit B. As described further below, the Co-Applicants in that matter submitted the necessary cost allocation information during the process, making it available to the Commission, and thereby helping to satisfy the burden of showing that there would be no increase in costs or rates to PacifiCorp customers in the future, as a result of the transaction. Again, Hydro One and Avista have failed to do the same in this matter. That failure is fatal to the Application.

4. <u>The Information Provided by the Co-Applicants is Insufficient to Demonstrate that Costs and Rates Will Not Increase, thereby Requiring that the Application be Denied.</u>

Along with the merger Application, Hydro One submitted the *Direct Testimony of Christopher Lopez,* Hydro One Senior Vice President of Finance, on September 14, 2017. From page 17 of that testimony is the following about cost allocations:

"Q: Does Hydro One make any commitment with respect to how corporate costs will be allocated?
A: Yes. **Commitment 23** provides that Avista will file cost allocation methodologies used to allocate to Avista any cost related to Olympus Holding Corp. or its other subsidiaries and that Avista will bear the burden of proof in any general rate case that any corporate or affiliate cost allocation methodology it proposes is reasonable for ratemaking purposes."

The *Direct Testimony of Patrick Ehrbar*, Avista Director of Rates, State and Federal Regulation Department, was also submitted with the Application. Pages 12-13 set forth the following testimony:

"The cost-allocation methodology provided pursuant to this commitment will be a generic methodology that does not require Commission approval prior to it being proposed for specific application in a general rate case or other proceeding affecting rates."

Finally, Exhibit A to the proposed Stipulation, at page 10 (Commitment 24) provides:

> The cost-allocation methodology provided pursuant to this commitment will be a generic methodology and does not require Commission approval prior to it being proposed for specific application in a general rate case or other proceeding affecting rates. Avista will bear the burden of proof in any general rate case that any corporate and affiliate cost allocation methodology is reasonable for ratemaking purposes. Neither Avista nor Hydro One or its affiliates and subsidiaries will contest the Commission's authority to disallow, for retail ratemaking purposes in a general rate case, unreasonable, or misallocated costs from or to Avista or Hydro One or its other affiliates and subsidiaries.

This is not a general rate case. The burden imposed on the Co-Applicants exists now, in this proceeding, pursuant to I.C. § 61-328(3). The question is not whether the cost allocation methodology is reasonable for ratemaking purposes. Rather, the question is whether the proposed transaction – the merger – will result in an increase in costs or rates for Avista and its customers.

As the OEB aptly stated in its decision regarding Hydro One's proposed acquisition of Orillia Power (attached hereto as Exhibit A and hereinafter referred to as "*OEB Order*"), the "primary concern is that there is a reasonable expectation that underlying cost structures for the acquired utility are no higher than they would have been had the consolidation not occurred." *OEB Order* at 12. Also applicable here, the OEB stated: "While the rate implications to all customers will be considered, for an acquisition, the primary consideration will be the expected impact on customers of the acquired utility". *Id.*

In this matter, the primary consideration is the impact on customers of Avista. This is especially pertinent given the *Direct Testimony of Mayo Schmidt*, President and CEO of Hydro One

(at pages 26-29), explaining that "the reasons for Hydro One's proposed acquisition of Avista" include: "Together, with nearly two million customers, they can spread some of these costs over a larger base" and "over a broader customer base. . .The markets that we are entering have expanding economies and positive and growing customer demographics".

It is simply not possible for the Commission to determine the expected impact on Avista customers without the required cost allocation information. The failure to provide this information falls at the feet of the Co-Applicants and, absent the information being provided, cannot be cured with a condition, another commitment, or lengthy explanations. This shortcoming is dispositive.

In the Orillia Power matter, "OEB ordered Hydro One to file further material, in the form of evidence or submissions on its expectations of the overall cost structures following the deferred rebasing period and the impact on Orillia Power customers. No new evidence was filed." *OEB Order* at 10. Instead, "Hydro One submitted that at the time of rebasing, Hydro One will adhere to the cost allocation and rate design principles, in place at such future time, ensuring that the costs allocated to Orillia Power customers fairly and accurately reflect the new lower cost structure to serve all customers." *Id.* at 10-11.

In light of Hydro One's failure to submit the required cost information, OEB concluded that Hydro One had failed to make the case that the underlying cost structures would be no greater than they would have been absent the acquisition. "In the absence of information to address that OEB concern, the OEB cannot reach the conclusion that there will be no harm." *Id.* at 13.

This is the same posture that the Hydro One-Avista merger proposal is in. The Co-Applicants have failed to satisfy their burden to demonstrate that costs or rates will not increase due to the transaction. This requires that the Application be denied, pursuant to I.C. § 61-328(3).

Importantly, the OEB's conclusions were reached despite the fact that Hydro One submitted that Orillia Power's customers would immediately benefit from a promised 1% reduction in rates during years 1 through 5 after the transaction. *Id.* at 8. Of course, the same kind of immediate benefits, in the form of rate credits, are being offered to Avista customers by Hydro One in this matter. The OEB stated that it "will not consider temporary rate decreases proposed by applicants, and other such temporary provisions, to be demonstrative of 'no harm' as they are not supported by, or reflective of the underlying cost structures of the entities involved and may not be sustainable or beneficial in the long term." *Id.* at 11. The same is true in this matter.

Also "informative" to the OEB decision was "[t]he experience of the three acquired utilities in Hydro One's current distribution rates case":

> In the [acquisition] proceedings in which Hydro One acquired these utilities, Hydro One pointed to savings that would be realized through the acquisition. Although these savings may well have occurred, they do not appear to have resulted in overall cost structures (and therefore rates) for customers of the acquired utilities that are no higher than they would have been, once the deferral period ended and their rates were adjusted to account for Hydro One's overall costs to serve them. Material filed in the Hydro One current distribution rates case shows that some rate classes are expected to experience significant and material increases. While the OEB has not approved these requested rates, this panel takes notice of the proposed rate increases which Hydro One states are reflective of the costs to service the acquired customers, and are inclusive of the "savings" that Hydro One states were realized.
>
> *Id.* at 12-13.

The same kind of "benefits of scale" highlighted so prominently by Hydro One in this proceeding were also emphasized by Hydro One in the Orillia Power matter. However, just as in the Orillia Power matter, these uncertain, future "savings" pale in comparison to the unanswered questions regarding the overall cost structures (and therefore rates) for customers of the acquired utilities. It is the Co-Applicants' responsibility to fill this void, which they have failed to do.

Recognizing "that it is not certain that Orillia Power customers' experiences would be the same" as the other three utilities acquired by Hydro One, "the OEB provided Hydro One the

opportunity to file further evidence on what it expects the overall cost structure to be following the deferral period and to explain the impact on Orillia's customers. Hydro One did not file further evidence." *Id.* at 13. In response, the OEB stated that it "is of the view that it would have been reasonable to see a forecast of costs to service Orillia customers beyond the ten year period and an explanation of the general methodology of how costs would be allocated to Orillia ratepayers after the deferral period." *Id.*

While similarly recognizing "that it is not certain" that Avista customers' "experiences would be the same" as the other utilities acquired by Hydro One, a "forecast of costs to service" Avista customers and "an explanation of the general methodology of how costs would be allocated" to Avista customers are equally "reasonable" in this matter. Without this information, the Commission cannot determine whether costs (and therefore rates) will increase and must therefore deny the Application.

The Commission's own experience with the past acquisition of PacifiCorp by ScottishPower nearly twenty years ago further demonstrates the critical role of cost allocation information in making the decision required under the statute, particularly when a smaller utility is being acquired by a larger one.

Condition No. 34 of the Commission's *Order No. 28213*, attached hereto as Exhibit B, recognized that during the Application proceedings, "ScottishPower/PacifiCorp provided the Commission and other jurisdictional state rate regulators a proposed methodology for the allocation of corporate and affiliate investments, expenses and overheads" and "scheduled a conference/meeting with state and other interested regulators to discuss the proposed corporate and affiliate cost allocation methodology" with "[f]urther conferences/meetings. . .scheduled as needed to discuss the cost allocation issue." *Order No. 28213* (Exhibit B) at 14.

These efforts ultimately allowed the Commission to make the critical finding that "PacifiCorp will be assigned a fixed sum of corporate costs that is less than it currently incurs." *Id.* at 25. This is consistent with the OEB's requirement "that underlying cost structures for the acquired utility are no higher than they would have been had the consolidation not occurred." *OEB Order* at 12.

No such showing has been made by the Co-Applicants in this case. As a result, the Hydro One-Avista merger Application must be denied.

DATED this 27th day of June 2018.

PARSONS BEHLE & LATIMER

By: _____
Norman M. Semanko

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following on this 27th day of June, 2018 by the following method:

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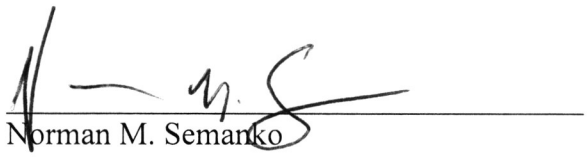

Norman M. Semanko

Exhibit A

Ontario Energy Board
Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2016-0276

HYDRO ONE INC.

ORILLIA POWER DISTRIBUTION CORPORATION

Application for approval to purchase Orillia Power Distribution Corporation

BEFORE: Ken Quesnelle
Presiding Member and Vice-Chair

Christine Long
Member and Vice-Chair

Cathy Spoel
Member

April 12, 2018

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1 INTRODUCTION AND SUMMARY

This is the Decision of the Ontario Energy Board (OEB) regarding an application filed by Hydro One Inc. (Hydro One).

On September 27, 2016, Hydro One filed an application requesting the OEB's approval to acquire all of the shares of Orillia Power Distribution Corporation (Orillia Power).

As part of the proposed share acquisition, Hydro One and Orillia Power requested approval for several related proposals, including: (a) a one percent reduction in Orillia Power's residential and general service customers base distribution rates for the first five years of the proposed ten year deferred rebasing period, from the closing of the transaction; (b) transfer of Orillia Power's rate order to Hydro One; (c) transfer of Orillia Power's distribution system to Hydro One; (d) cancellation of Orillia Power's electricity distributor licence; and (e) amendment of Hydro One's electricity distributor licence. The OEB assigned the application file number EB-2016-0276.

Section 86 of the *Ontario Energy Board Act, 1998*[1](the Act) requires that the OEB review applications for a merger, acquisition of shares, divestiture or amalgamation that result in a change of ownership or control of an electricity transmitter or distributor and approve applications which are in the public interest.

In accordance with its ordinary practice, the OEB has applied the no harm test in assessing this application. The OEB denies Hydro One's application to acquire the shares of Orillia Power as the OEB is not satisfied that the no harm test has been met. Consequently, the related approval requests made as part of the share acquisition application are also denied.

[1] S.O. 1998, c.15 Schedule B

2 THE APPLICATION

Hydro One filed an application under section 86(2)(b) of the Act for approval to acquire all of the shares of Orillia Power (MAAD application).

As part of the proposed share acquisition, Hydro One and Orillia Power requested the OEB's approval for related transactions/proposals:

- Inclusion of a rate rider in Orillia Power's 2016 OEB approved rate schedule, under section 78 of the Act, to give effect to a 1% reduction in base electricity distribution rates for residential and general service customers until 2022
- Transfer of Orillia Power's rate order to Hydro One, under section 18 of the Act
- Transfer of Orillia Power's distribution system to Hydro One, under section 86(1)(a) of the Act
- Cancellation of Orillia Power's electricity distribution licence, under section 77(5) of the Act
- Amendment of Hydro One's electricity distribution licence, under section 74 of the Act
- A proposed Earnings Sharing Mechanism(ESM) which would guarantee a sharing of $3.4 million of overearnings with Orillia Power customers
- Use of an Incremental Capital Module during the selected ten year deferred rebasing period
- Continued tracking of costs to the deferral and variance accounts currently approved by the OEB for Orillia Power and disposition of their balances at a future date
- Use of United States Generally Accepted Accounting Principles for Orillia Power financial reporting
- Application of Hydro One's Specific Service Charges to Orillia Power's customers
- A new deferral and variance regulatory account for ESM cost tracking

Process

The OEB issued a Notice of Application and Hearing on November 7, 2016, inviting intervention and comment.

The OEB approved the intervention requests of School Energy Coalition (SEC), the Vulnerable Energy Consumers Coalition (VECC), the Consumers Council of Canada (CCC), and Mr. Frank Kehoe. The OEB also determined that these intervenors are eligible to apply for an award of costs in this proceeding under the OEB's *Practice Direction on Cost* Awards.

The OEB provided for interrogatories and submissions on the application.

In the submissions filed, some intervenors raised concerns related to Hydro One's rate proposals and revenue requirements for previously acquired utilities (Norfolk, Haldimand, and Woodstock) contained in Hydro One's concurrent distribution rate application[2], filed on March 31, 2017. These intervenors submitted that the customers of these former utilities are expected to experience significant rate increases once the deferral period expires, and it is not therefore the case that these customers experienced "no harm". Although the distribution rates application did not include Orillia Power (because the deferral period would not end until after the term of that application), intervenors were concerned that if the current application is approved a similar fate would befall Orillia Power's customers once its deferral period ended. OEB staff observed that the proposed rates suggest large distribution rate increases for some customers of these acquired utilities once the deferred rebasing period elapses.

In its reply argument, Hydro One submitted that there is a reasonable expectation, based on underlying cost structures, that the costs to serve acquired Orillia Power customers following the consolidation will be no higher than they otherwise would have been.

Having reviewed the evidence and the submissions of parties, the OEB issued Procedural Order No. 6, on July 27, 2017, in which it determined that the hearing of the MAAD application would be adjourned until the OEB rendered its decision on Hydro One's rate application. The OEB found that Hydro One should defend its cost allocation

[2] EB-2017-0049

proposal in the distribution rate application prior to the OEB determining if the Orillia Power acquisition is likely to cause harm to any of its current customers.

Hydro One and Orillia Power each filed a Notice of Motion requesting a review and variance of Procedural Order No. 6. In a decision[3] (Motions Decision), issued on January 4, 2018, the OEB granted the motions and referred the matter back to the OEB panel on the MAAD application for re-consideration.

In Procedural Order No. 7 issued on February 5, 2018, the OEB determined that it would re-open the record of the MAAD application. The OEB ordered Hydro One to file further material, in the form of evidence or submissions on its expectations of the overall cost structures following the deferred rebasing period and the impact on Orillia Power customers.

Submissions were filed by Hydro One and Orillia Power on February 15, 2018.

[3] EB-2017-0320

3 REGULATORY PRINCIPLES

3.1 The No Harm Test

The OEB applies the no harm test in its assessment of consolidation applications[4],as described in The *Handbook to Electricity Distributor and Transmitter Consolidations* (Handbook) issued by the OEB on January 19, 2016.

The OEB considers whether the no harm test is satisfied based on an assessment of the cumulative effect of the transaction on the attainment of its statutory objectives. If the proposed transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the application.

The statutory objectives to be considered are those set out in section 1 of the Act:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.

   1.1 To promote the education of consumers.

2 To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.

3 To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario.

4 To facilitate the implementation of a smart grid in Ontario.

5 To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

While the OEB has broad statutory objectives, in applying the no harm test, the OEB has focused on the objectives that are of most direct relevance to the impact of the proposed transaction; namely, price, reliability and quality of electricity service to

[4] The OEB adopted the no harm test in a combined proceeding (RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257) as the relevant test for determining applications for leave to acquire shares or amalgamate under section 86 of the Act and it has been subsequently applied in applications for consolidation.

customers, and the cost effectiveness, economic efficiency and financial viability of the consolidating utilities.

The OEB considers this an appropriate approach, given the OEB's performance-based regulatory framework, the Renewed Regulatory Framework for Electricity Distributors (RRFE)[5], which was set up to ensure that regulated distribution companies operate efficiently, cost effectively and deliver outcomes that provide value for money for customers. One of these outcomes is operational effectiveness, which requires continuous improvement in productivity and cost performance by distributors and that utilities deliver on system reliability and quality objectives.

Ongoing performance improvement and performance monitoring are underlying principles of the RRFE. The OEB has established performance standards to be met by distributors, ongoing reporting to the OEB by distributors, and ongoing monitoring of distributor achievement against these standards by the OEB. These metrics are used by the OEB to assess a distributor's services, such as frequency of power outages, financial performance and costs per customer.

The OEB assesses applications for consolidation within the context of the RRFE. The OEB is informed by the metrics that are used to evaluate a distributor's performance in assessing a proposed consolidation transaction. All of these measures are in place to ensure that distributors meet expectations regardless of their corporate structure or ownership.

[5] Report of the Board: Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach

3.2 OEB Policy on Rate-Making Associated with Consolidation

To encourage consolidations in the electricity sector, the OEB has put in place policies on rate-making that provide consolidating distributors with an opportunity to offset transaction costs with savings achieved as a result of the consolidation.

The OEB's 2015 Report[6] permits consolidating distributors to defer rebasing for up to ten years from the closing of the transaction. The extent of the deferred rebasing period is at the option of the distributor and no supporting evidence is required to justify the selection of the deferred rebasing period. Consolidating entities, must, however, select a definitive timeframe for the deferred rebasing period.

The 2015 Report sets out the rate-setting mechanisms during the deferred rebasing period, requiring consolidating entities that propose to defer rebasing beyond five years to implement an ESM for the period beyond five years to protect customers and ensure that they share in increased benefits from consolidation.

The Handbook clarifies that rate-setting following a consolidation will not be addressed in an application for approval of a consolidation transaction unless there is a rate proposal that is an integral aspect of the consolidation, e.g. a temporary rate reduction. Rate-setting for a consolidated entity will be addressed in a separate rate application, in accordance with the rate setting policies established by the OEB.

[6] EB-2014-0138 Report of the Board on Rate-making Associated with Distributor Consolidation, March 26, 2015

4 DECISION ON THE ISSUES

4.1 Application of the No Harm Test

Price, Cost Effectiveness and Economic Efficiency

Hydro One submitted that Orillia Power's customers will benefit from the proposed transaction through a: (i) reduction of 1% in the base distribution delivery rates for Orillia Power's residential and general service customers in years 1 to 5; (ii) rate increase of less than inflation in years 6 to 10 (inflation less a productivity stretch factor); and (iii) $3.4 million being paid to Orillia Power customers, a result of the guaranteed ESM.[7]

Hydro One provided a forecast ten year cost structure analysis, that compared overall expected savings based on Orillia Power, remaining as a stand-alone distribution utility (status quo) to having Orillia Power integrated with Hydro One's existing operations.

Hydro One projected that the consolidation would result in overall ongoing operating, maintenance and administration (OM&A) cost savings of approximately $3.9 million per year and reductions in capital expenditures of approximately $0.6 million per year. Cost savings are anticipated from elimination of redundant administrative and processing functions in the following areas: financial, regulatory, legal, executive and governance, human resources, and information technology; as well as economies of scale from a larger customer base such that costs for processing systems like billing, customer care, human resources and financial are spread over a larger group of customers.[8]

Hydro One asserted that geographic contiguity (Hydro One's existing service area being situated immediately adjacent to Orillia Power's service area) allows for economies of scale to be realized at the field or operational level through more efficient scheduling of operational and maintenance work and dispatching of crews over a larger service area. Hydro One also asserted that more efficient utilization of work equipment (e.g. trucks and other tools), leads to lower capital replacement needs over time and more rational and efficient planning and development of the distribution system.[9]

In the submissions filed, parties questioned Hydro One's submissions.

[7] Application, Exh A/T1/S1, p.4
[8] Application, Exh A/T1/S1, pages 2, 11-13
[9] Application, Exh A/T1/S1, p.10

SEC argued that approval for the proposed transaction should be denied, stating that the no harm test will not be met in this case. SEC submitted that Hydro One has shown no credible evidence that it will be able to generate any savings by acquiring Orillia Power and that there will be cost increases for Orillia's customers after the deferral period.[10] SEC argued that there were no cost savings for the customers of Norfolk, Haldimand and Woodstock, noting the rates proposed for customers of these previously acquired utilities rise significantly after the end of the deferral period as shown in Hydro One's distribution rate application. SEC submitted that the rates of Orillia's customers are likely to rise in a similar manner.

CCC submitted that Hydro One has provided no evidence in this proceeding to support the argument that the transaction meets the no harm test. CCC referenced Hydro One's distribution rate application, stating that Hydro One has proposed a new rate class for Norfolk, Haldimand and Woodstock that has the rates of the customers in those areas rising significantly. CCC submitted that Hydro One has provided no guarantee that when the deferral period ends, the rates for Orillia Power's customers will reflect the costs to serve these customers. CCC submitted that unless Hydro One can convince the OEB that the benefits of this transaction (a 1% rate reduction, a rate freeze and up-front ESM savings) to Orillia Power's customers outweigh the expected rate increases at the end of the deferral period, the transaction should not be approved.[11]

VECC submitted that it accepts that the application meets the no harm test with respect to price although the benefits to Orillia Power customers are not as significant as claimed. VECC argued that the no harm test with respect to price can only be satisfied if the rates eventually charged to former Orillia Power customers are reflective of Hydro One's cost to serve them and submitted that the OEB should set out this expectation as it has done with other consolidation applications filed by Hydro One.[12]

OEB staff submitted that the evidence provided by Hydro One supports the claim that the proposed transaction can reasonably be expected to result in overall cost savings and operational efficiencies but that these operational and cost efficiencies may not necessarily translate to lower distribution rates for customers of the acquired entity after the deferred rebasing period has ended. OEB staff observed that the rates proposed for previously acquired utilities in Hydro One's distribution rate application suggest large

[10] SEC Submissions, p. 4,6
[11] CCC Submissions, p.3
[12] VECC Submissions

distribution rate increases for some customers of these acquired utilities once the deferred rebasing period elapses.[13]

Hydro One responded to VECC's submissions stating that it is Hydro One's intention to apply rates to Orillia Power's customers that reflect the cost of serving those customers at that time.

In response to SEC's assertions, Hydro One stated that it has provided evidence that the proposed transaction results in the lowering of cost structures to operate the existing Orillia Power service territory. In its reply submissions, Hydro One provided a cost structure analysis for the period 2015-2022 reflecting that the cost structures of Norfolk, Haldimand and Woodstock are lower than they would have been absent the consolidation transactions. Hydro One argued that the evidence provided in its distribution rate application shows that costs have declined consistent with the projections made in the consolidation application for each of the three previously acquired distributors. Hydro One submitted that there is a reasonable expectation, based on underlying cost structures, that the costs to serve acquired Orillia Power customers following the consolidation will be no higher than they otherwise would have been.[14]

Orillia Power argued that the evidence filed in this case supports a finding that efficiencies will be gained and lower costs will be realised as a result of the proposed acquisition and that any reference to Hydro One's rate application is irrelevant to the issues before the OEB in this application. Orillia Power submitted that this acquisition is an illustration of the types of ratepayer benefits envisioned by the Ontario Distribution Sector Review Panel in its report on the benefits of distributor company consolidations.

In Procedural Order No. 7, the OEB ordered Hydro One to file further material, in the form of evidence or submissions on its expectations of the overall cost structures following the deferred rebasing period and the impact on Orillia Power customers.

No new evidence was filed. Submissions were filed by Hydro One and Orillia Power. Hydro One submitted that, based on the projected Hydro One cost savings forecast for the 10 year period following the transaction, Hydro One can definitively state that the overall cost structures to serve the Orillia area will be lower following the deferred rebasing period in comparison to the status quo. Hydro One submitted that at the time of rebasing, Hydro One will adhere to the cost allocation and rate design principles, in

[13] OEB Staff Submissions, p.7
[14] Hydro One Final Argument, May 5, 2017 pages 2-5

place at such time in the future, ensuring that the costs allocated to Orillia Power customers fairly and accurately reflect the new lower cost structure to serve all customers.[15] Orillia Power supported the submissions of Hydro One.

OEB Findings

In reviewing a proposed transaction, the OEB examines the long term effect of the consolidation on customers.

The Handbook clarified the OEB's expectations with respect to price:

> "A simple comparison of current rates between consolidating distributors does not reveal the potential for lower cost service delivery. These entities may have dissimilar service territories, each with a different customer mix resulting in differing rate class structure characteristics. For these reasons, the OEB will assess the underlying cost structures of the consolidating utilities. As distribution rates are based on a distributor's current and projected costs, it is important for the OEB to consider the impact of a transaction on the cost structure of consolidating entities both now and in the future, particularly if there appear to be significant differences in the size or demographics of consolidating distributors. A key expectation of the RRFE is continuous improvement in productivity and cost performance by distributors. The OEB's review of underlying cost structures supports the OEB's role in regulating price for the protection of consumers.
>
> Consistent with recent decisions,[16] the OEB will not consider temporary rate decreases proposed by applicants, and other such temporary provisions, to be demonstrative of "no harm" as they are not supported by, or reflective of the underlying cost structures of the entities involved and may not be sustainable or beneficial in the long term. In reviewing a transaction the OEB must consider the long term effect of the consolidation on customers and the financial sustainability of the sector.
>
> To demonstrate "no harm", applicants must show that there is a reasonable expectation based on underlying cost structures that the costs to serve

[15] Hydro One Cost Structure Submissions, February 15, 2018, pages 2,6
[16] EB-2013-0196/EB-2013-0187/EB-2013-0198
EB-2014-0244

> acquired customers following a consolidation will be no higher than they otherwise would have been. While the rate implications to all customers will be considered, for an acquisition, the primary consideration will be the expected impact on customers of the acquired utility".[17]

One of the key considerations in the no harm test is protecting customers with respect to the prices they pay for electricity service. Although the Handbook states that "rate setting" following a consolidation will not be considered as part of a section 86 application, that does not mean the OEB will not consider the costs that acquired customers will have to pay following an acquisition (both in the short term and the long term). Indeed the Handbook is clear that the underlying cost structures and the rate implications of those cost structures will be a key consideration.

As stated in the Handbook and confirmed in decisions made on previous Hydro One acquisitions[18], the OEB does not consider temporary rate decreases to be on their own demonstrative of no harm as they are not supported by, or reflective of the underlying cost structures of the entities involved and may not be sustainable or beneficial in the long term.

The OEB's primary concern is that there is a reasonable expectation that underlying cost structures for the acquired utility are no higher than they would have been had the consolidation not occurred. Although the OEB accepts that the acquisition will lead to some savings on account of eliminating redundancies, that does not necessarily mean that Hydro One's overall cost structure to serve Orillia's customers will be no higher than Orillia's underlying cost structure would have been absent the proposed acquisition.

The experience of the three acquired utilities in Hydro One's current distribution rates case is informative. In the MAADs proceedings in which Hydro One acquired these utilities, Hydro One pointed to savings that would be realized through the acquisition. Although these savings may well have occurred, they do not appear to have resulted in overall cost structures (and therefore rates) for customers of the acquired utilities that are no higher than they would have been, once the deferral period ended and their rates were adjusted to account for Hydro One's overall costs to serve them. Material filed in the Hydro One current distribution rates case shows that some rate classes are

[17] Handbook, pages 6-7
[18] EB-2013-0196/EB-2013-0187/EB-2013-0198
EB-2014-0244
EB-2014-0213

expected to experience significant and material increases.[19] While the OEB has not approved these requested rates, this panel takes notice of the proposed rate increases which Hydro One states are reflective of the costs to service the acquired customers, and are inclusive of the "savings" that Hydro One states were realized.

The OEB recognizes that Orillia was not part of Hydro One's distribution rates filing, and that it is not certain that its customers' experiences would be the same. Because of this uncertainty, the OEB provided Hydro One the opportunity to file further evidence on what it expects the overall cost structure to be following the deferral period and to explain the impact on Orillia's customers. Hydro One did not file further evidence. Hydro One's submissions simply restated its expectation that based on the projected Hydro One cost savings forecast for the 10 year period following the transaction, the overall cost structures to serve the Orillia area will be lower following the deferred rebasing period in comparison to the status quo. The OEB is of the view that it would have been reasonable to see a forecast of costs to service Orillia customers beyond the ten year period and an explanation of the general methodology of how costs would be allocated to Orillia ratepayers after the deferral period. Hydro One takes the position that this information is not known. The OEB recognizes that any forecast of cost structures and cost allocation 10 years out would include various assumptions and could not be expected to be 100% accurate. However, the OEB has highlighted its concern and its need to better understand the implications of how Orillia customers will be impacted by the consolidation beyond the ten year period. In the absence of information to address that OEB concern, the OEB cannot reach the conclusion that there will be no harm.

As discussed above, the OEB is not satisfied that a list of forecast cost savings from the acquisition automatically results in overall cost structures for the customers of the acquired utility that are no higher than they would be without the consolidation. Hydro One has failed to make the case that the OEB can be assured that the underlying cost structures would be no greater than they would have been absent the acquisition.

The OEB is therefore not satisfied that the no harm test has been met, and on this basis the application is denied.

[19] Hydro One Final Argument, Attachment 1

Reliability and Quality of Electricity Service

Hydro One submitted that it will endeavour to maintain or improve reliability and quality of electricity service for all of its customers.

Hydro One provided a comparison of reliability statistics from 2013-2015 claiming that Hydro One customers in the vicinity of the City of Orillia experienced a level of service in terms of duration and frequency of interruptions comparable to the level experienced by Orillia Power customers. Hydro One submitted that it anticipates that reliability will improve with the combination of pre-existing Hydro One and former Orillia Power resources optimized for the broader Orillia area.[20]

Hydro One also provided a comparison of Hydro One's and Orillia Power's performance on various dimensions of service quality.[21]

Hydro One's interrogatory responses indicated that of the fifteen Orillia Power direct staff positions, nine positions will be absorbed by Hydro One while six positions will be eliminated. Hydro One submitted that the associated work will be picked up by other (more centralized) units in Hydro One.[22]

Hydro One indicated that it intends to construct a new operations centre within the City of Orillia to consolidate operations between Hydro One's pre-existing Orillia operating centre and Orillia Power's operating centre. Hydro One submitted that Orillia Power's current facility is undersized with no expansion potential and is not ideally located to serve the expanded service area. The current Hydro One operations centre is considered too small and inflexible to meet the operating needs of the company.

Hydro One stated that the need for a new operations centre would still exist if this transaction was not contemplated. Hydro One argued that consolidation of the operation centres will not impact service quality or reliability and will be more operationally and cost efficient.[23]

VECC submitted that Hydro One's evidence does not clearly demonstrate that the no harm will be satisfied. VECC submitted that the SAIDI and SAIFI statistics are inconclusive as to whether Hydro One's reliability performance is better or worse.

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[20] Application, Exh A/T2/S1/p.7
[21] Application, Exh I/T3/S17 c)
[22] OEB Staff IR 8 and VECC IR 12
[23] OEB Staff IR 5 e)

VECC expressed concerns with Hydro One's anticipated reductions in direct staff positions and how it would impact reliability. VECC submitted that there is no evidence that, based on Hydro One's spending plans, reliability for former Orillia Power customers will improve in the future or even that current levels of reliability will be maintained for former Orillia Power customers.

VECC submitted that the comparison of the service quality metrics demonstrates that Orillia Power's current performance exceeds Hydro One's in almost every category suggesting that service quality for Orillia Power's customers could decline as a result of the application.[24]

CCC asserted that Hydro One has filed no compelling evidence that Orillia Power's reliability will be maintained or improved as a result of the transaction. CCC submitted that Orillia Power's service quality metrics are generally better than Hydro One[25] indicating that Orillia Power's customers will have a lower quality of service under Hydro One ownership.

OEB staff submitted that, based on the evidence provided, Hydro One can reasonably be expected to maintain the service quality and reliability standards currently provided by Orillia Power.

OEB staff submitted that with respect to Hydro One's proposed construction of a new operations centre, the OEB should, in making its decision, specifically note that it is not approving the construction of this operation centre as part of this proceeding as the OEB will review whether this is a prudent expenditure in a future rate application. OEB staff also submitted that the OEB examine the cost/benefit of the new operations centre and whether other options were explored in the future rate application.

In reply submissions, Hydro One submitted that the differences in the SAIDI and SAIFI results can likely be attributed to differences in geography and asset characteristics. For instance, Hydro One's local service territory is still more rural relative to the Orillia Power's service territory, and approximately 30% of Orillia Power's service territory is served by an underground distribution system. Hydro One reasserted that despite these differences, its reliability results were relatively similar to Orillia Power for both SAIDI and SAIFI.

[24] VECC Submissions
[25] Application, Exh I/T3/S17

Hydro One argued that Orillia Power customers' reliability levels are protected through the OEB's codes and licence requirements. With respect to the service quality metrics comparison, Hydro One submitted that its results are relatively similar to those of Orillia Power for the majority of the measures and that for the two measures for which Hydro One's results are below Orillia Power's (telephone accessibility and telephone call abandon rates), Hydro One's results are still compliant with the OEB-prescribed standards.

Hydro One reaffirmed that it will maintain Orillia Power's existing reliability and quality of service levels as it will have to continue to have regional operations in the Orillia area, consisting of both existing Orillia Power staff and Hydro One staff.

OEB Findings

The Handbook sets out that in considering the impact of a proposed transaction on the quality and reliability of electricity service, and whether the no harm test has been met, the OEB will be informed by the metrics provided by the distributor in its annual reporting to the OEB and published in its annual scorecard. The Handbook also sets out that utilities are expected to deliver continuous improvement for both reliability and service quality performance to benefit customers following a consolidation and will be monitored for the consolidated entity under the same established requirements.[26]

The OEB is satisfied based on the evidence before it, that it can be reasonably expected that Orillia Power's quality and reliability of service would be maintained following a consolidation. The fact that the consolidated entity is required to report on reliability and quality of service metrics in its annual filings confirms to the OEB that any reduction in service quality would become apparent and would be addressed therefore reducing any risk of harm.

Financial Viability

Hydro One has agreed to purchase the shares of Orillia Power at a price of $41.3 million, consisting of a cash payment of approximately $26.4 million and the assumption

[26] Handbook, p. 7

of short and long term debt of approximately $14.9 million. The 2015 net book value of Orillia Power's assets is $22.5 million.

Hydro One submitted that the premium paid will not be recovered through rates and will not impact any future revenue requirement. Hydro One also stated that the proposed transaction will not have a material impact on Hydro One's financial position as the price is less than 1% of Hydro One's net fixed assets.

Hydro One submitted that it expects to incur incremental transaction costs of approximately $3 million for legal, advisory and tax costs for the completion of the transaction and costs associated with the necessary regulatory approvals. In addition, Hydro One expects to incur $5 to $6 million in integration costs, which includes up-front costs to transfer the customers into Hydro One's customer and outage management systems. Hydro One confirmed that all of these costs will be financed through productivity gains associated with the transaction and will not be recovered through rates

OEB staff submitted that the applicants' evidence demonstrates that no adverse impact on the applicants' financial viability is anticipated.

OEB Findings

The Handbook sets out that the impact of a proposed transaction on the acquiring utility's financial viability for an acquisition, or on the financial viability of the consolidated entity in the case of a merger will be assessed.

The OEB's primary considerations in this regard are:

- The effect of the purchase price, including any premium paid above the historic (book) value of the assets involved
- The financing of incremental costs (transaction and integration costs) to implement the consolidation transaction

The OEB does not find that there will be an adverse impact on Hydro One's financial viability as a result of its proposals for financing the proposed acquisition transaction.

4.2 Other Approval Requests

As part of the proposed share acquisition, Hydro One and Orillia Power requested the OEB's approval for related transactions/proposals:

- Inclusion of a rate rider in Orillia Power's 2016 OEB approved rate schedule, under section 78 of the Act, to give effect to a 1% reduction in base electricity distribution rates for residential and general service customers until 2022
- Transfer of Orillia Power's rate order to Hydro One, under section 18 of the Act
- Transfer of Orillia Power's distribution system to Hydro One, under section 86(1)(a) of the Act
- Cancellation of Orillia Power's electricity distribution licence, under section 77(5) of the Act
- Amendment of Hydro One's electricity distribution licence, under section 74 of the Act
- Proposed ESM which guarantees a sharing of $3.4 million of overearnings with Orillia Power customers
- Use of an Incremental Capital Module during the selected ten year deferred rebasing period
- Continued tracking of costs to the deferral and variance accounts currently approved by the OEB for Orillia Power and disposition of their balances at a future date
- Use of United States Generally Accepted Accounting Principles for Orillia Power financial reporting
- Application of Hydro One's Specific Service Charges to Orillia Power's customers
- A new regulatory account for ESM cost tracking

OEB Findings

As the OEB is denying Hydro One's application for the proposed share acquisition transaction, the requests set out above, which are applicable only in the event that the proposed transaction were to be approved are also denied.

5 CONCLUSION

The OEB denies Hydro One's application to acquire the shares of Orillia Power as the OEB is not satisfied that the no harm test has been met. Consequently, the additional related approval requests made as part of the application are also denied.

The OEB finds that the applicants bear the onus of satisfying the OEB that there will be no harm.

In reviewing a proposed consolidation transaction, the OEB examines both the short term and the long term effect of the consolidation on customers.

The OEB has determined that it is reasonable to expect that the underlying cost structures to serve acquired customers following a proposed consolidation will be no higher than they otherwise would have been.

It is the OEB's expectation that future rates paid by the acquired customers will be based on the same cost structures used to project the future cost savings in support of this application.

Hydro One has not demonstrated that it is reasonable to expect that the underlying cost structures to serve the customers of Orillia Power will be no higher than they otherwise would have been, nor that they will underpin future rates paid by these customers.

6 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The application filed by Hydro One Inc. to acquire all of the issued and outstanding shares of Orillia Power Distribution Corporation is denied. All related approval requests made as part of the application are also denied.

2. The applicants shall pay the OEB's costs of and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

DATED at Toronto April 12, 2018

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Exhibit B

Office of the Secretary
Service Date
November 15, 1999

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT APPLICATION AND PETITION OF PACIFICORP AND SCOTTISH POWER PLC FOR A DECLARATORY ORDER OR ORDER APPROVING PROPOSED TRANSACTION AND AN ORDER APPROVING THE ISSUANCE OF PACIFICORP COMMON STOCK.	)	**CASE NO. PAC-E-99-1**
	)	**ORDER NO. 28213**

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT APPLICATION AND PETITION OF PACIFICORP AND SCOTTISH POWER PLC FOR A DECLARATORY ORDER OR ORDER APPROVING PROPOSED TRANSACTION AND AN ORDER APPROVING THE ISSUANCE OF PACIFICORP COMMON STOCK.	**CASE NO. PAC-E-99-1** **ORDER NO. 28213**

I. SYNOPSIS

On December 31, 1998, PacifiCorp and Scottish Power plc (ScottishPower) (hereinafter referred to either individually or collectively as "Joint Applicants"), filed a Joint Application and Petition for Declaratory Order with this Commission seeking authority to execute a stock transaction that would result in the merger of PacifiCorp and ScottishPower. We hereby approve the Joint Application for merger approval subject to the numerous terms and conditions set forth herein. Many of the conditions contained in this Order resulted from testimony provided by numerous citizens who participated in four separate public hearings. We further deny the Motion to Dismiss the Joint Application filed by the Idaho Irrigation Pumpers Association (Irrigators) and award that group intervenor funding in the amount of $9,846.97.

II. BACKGROUND

A. The Application

PacifiCorp is a public utility providing retail electric service to approximately 53,000 customers in southeastern Idaho through its operating division, Utah Power & Light (UP&L), pursuant to Certificates of Public Convenience and Necessity issued by this Commission. PacifiCorp is subject to the Commission's jurisdiction under *Idaho Code* § 61-101, *et seq.* (the "Public Utilities Law"). PacifiCorp also provides electric service in the states of Oregon, Washington, Utah, Wyoming and California.[1] PacifiCorp's Idaho service territory constitutes

[1] PacifiCorp is currently in the process of selling its California service territory. The Joint Applicants have also sought merger approval from the state regulatory commissions of Oregon, Utah, Washington and Wyoming as well as the Federal Energy Regulatory Commission and the Securities and Exchange Commission.

less than 4% of that Company's total customer base. ScottishPower is a public limited company (plc) with its principal business office at Glasgow, Scotland and prior to this merger was not subject to this Commission's jurisdiction. ScottishPower is a multi-utility with approximately 5 million customers in Scotland, England and Wales providing electric, gas, telecommunications and water services in the United Kingdom.

The Joint Applicants state that on December 6, 1998, they entered into an agreement and plan of purchase transaction/merger ("merger agreement") pursuant to which an indirect, wholly-owned subsidiary of ScottishPower (Merger Sub) will merge with and into PacifiCorp, with PacifiCorp continuing in existence as the surviving corporation.

The Application further states that Article II of the merger agreement provides for the outstanding common shares of PacifiCorp to be converted into the right to receive, at the option of the holders of such shares, either newly issued ordinary shares of ScottishPower or newly issued ordinary shares of ScottishPower represented by American Depository Shares of ScottishPower and evidenced by American Depository Receipts. Each PacifiCorp share will be exchanged tax-free for 0.58 American Depository Receipts or 2.32 ordinary shares of ScottishPower. Article II further describes a mechanism providing for the cash payment by ScottishPower of fractional shares of PacifiCorp. As of the closing of the merger transaction, the outstanding shares of Merger Sub will be cancelled and PacifiCorp will issue to an entity indirectly and wholly-owned by ScottishPower an equal number of shares with the same rights, powers and privileges as the cancelled Merger Sub common stock. As a result of this merger, the Joint Applicants state, PacifiCorp will become a wholly-owned subsidiary of ScottishPower. The Joint Applicants argue that, unlike the PacifiCorp/Utah Power & Light merger, this proposed transaction does not involve a consolidation of two operating utility systems. After the close of the transaction, PacifiCorp will continue to exist on a stand-alone basis and to provide service to Idaho customers subject to the jurisdiction of the Commission.

The Joint Applicants state that ScottishPower has no other operations in the United States and, according to the Application, it has no intention to consolidate any of PacifiCorp's existing business operations with any of its own. The U.S. headquarters of ScottishPower will be located in Portland, Oregon, along with the headquarters of PacifiCorp which are currently located there. With the exception of the previously proposed sale of PacifiCorp's Centralia

generating station[2], ScottishPower states that it does not anticipate any additional sales of the physical assets that currently support PacifiCorp's regulated utility business. In any event, as we note below, any future sales of generation, transmission or distribution assets by PacifiCorp must first be authorized by this Commission.[3]

PacifiCorp will continue to maintain its own long and short-term debt, unless there are benefits to be gained from the use of other forms of capital. As long as it is subject to traditional cost of service regulation, PacifiCorp will continue to propose for ratemaking purposes that its capital structure and return on common equity be based on those of comparable electric utilities. To effectuate the merger, the Joint Applicants state that PacifiCorp will issue shares of common stock to a partnership comprised of subsidiaries of ScottishPower or to a holding company owned by the partnership. These shares will constitute the only outstanding shares of common stock of PacifiCorp. All other shares of common stock of PacifiCorp will, at that time, be either cancelled or converted. PacifiCorp's common stock will no longer be rated because it will not be publicly traded.

In their Application, the Joint Applicants included a Petition for a Declaratory Order from the Commission arguing that the Commission has jurisdiction over the merger solely by virtue of *Idaho Code* § 61-901 *et seq.* (the "securities issuance" statutes) and not under *Idaho Code* § 61-328 (pertaining to the sale, transfer or assignment of electric utility property), or any other laws. The Joint Applicants later withdrew this Petition in a letter dated January 26, 1999 in which Counsel for the Joint Applicants stated that their respective clients "consent that the transaction may be reviewed under [*Idaho Code* § 61-328] as well as [the Commission's] securities issuance statutes." Pursuant to the Commission's Procedural Rule 67 (IDAPA 31.01.01.067), the Petition for a Declaratory Order was withdrawn. Absent our assertion of jurisdiction pursuant to § 61-328, our ability to condition this merger to protect PacifiCorp's Idaho ratepayers would have been significantly diminished.

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[2] Currently pending before this Commission in Case No. PAC-E-99-2.

[3] *Idaho Code* § 61-328.

B. Procedural Background

1. Technical Hearing

On February 18, 1999, the Commission convened a Prehearing Conference in this matter for the purpose of issue identification and scheduling. Following the conclusion of the Prehearing Conference, the Commission issued Order No. 27939 directing all parties actively participating in the case to address the following issues or areas (with a reference, in parentheses, to where the issue is discussed in this Order):

(1) Irrigation concerns (Section III.F.5)

(2) Continued eligibility to participate in the BPA residential exchange program (Section III.F.2)

(3) Eligibility to participate in the BPA subscription process (Section III.F.2)

(4) Assurances that ScottishPower will not sell electric assets, reduce the work force, or adversely affect water rights (Section III.D.1)

(5) Concrete evidence to support the Applicants' claims of efficiencies to be achieved as a result of the merger (Sections III.E and III.F.1)

(6) Quality of service (Section III.F.1)

(7) Reliability (Section III.F.1)

Order No. 27939 also established a schedule for conducting discovery and for the prefiling of testimony. In addition, the Commission scheduled a technical hearing that was conducted in Boise on July 13-15, 1999. The following parties appeared at the hearing through their respective counsel:

PacifiCorp	John M. Eriksson/Mary S. Hobson Stoel Rives
ScottishPower	Dean J. Miller McDevitt & Miller
	James Van Nostrand Perkins Coie
Commission Staff	Brad M. Purdy Deputy Attorney General

Public Power Council	Peter J. Richardson Davis Wright Tremaine
Solutia	Randall C. Budge Racine, Olson, Nye, Budge & Bailey
Idaho Irrigation Pumpers Assoc.	W. Marcus Nye Racine, Olson, Nye, Budge & Bailey
J.R. Simplot Company	R. Scott Pasley
Idaho Consumer-Owned Utilities Assoc.	Conley Ward Givens Pursley LLP

Over the course of three days, the Commission heard testimony and received evidence from sixteen expert witnesses and reviewed numerous exhibits resulting in six volumes and nearly one thousand pages of hearing transcript.

2. Public Hearings

In recognition of the importance of this case, and the degree of public interest expressed, the Commission and its Staff traveled throughout southeastern Idaho conducting four separate hearings where it heard the testimony of hundreds of members of the public. The Commission conducted hearings in this case in Rexburg, Pocatello, Grace and Preston, Idaho. Over the course of several days, on two separate trips involving more than 1,000 miles of travel the Commission listened to hundreds of people, ranging from senior citizens to farmers, business owners and large industrial interests, testify about the proposed merger. In addition, the Commission received a considerable number of written comments through the mail from members of the public. Nearly all those who commented oppose the merger for a variety of reasons. Given the number of people who testified and commented, and the broad scope of their testimonies and comments, it is not possible for us to enumerate every concern or thought expressed. Therefore, we have summarized the general nature of the public testimony and comments and separated them into distinct categories. The evidence received during both the technical and public hearings is summarized and discussed throughout the "Findings of Fact and Conclusions of Law" section of this Order. The valuable input received from members of the public is largely responsible for many of the numerous merger approval conditions imposed by

this Order. Thanks to public input, therefore, PacifiCorp's Idaho customers can expect to enjoy lower rates and improved service.

C. Post Hearing Procedure

Following the conclusion of the technical hearing, as well as the public hearings in Rexburg and Pocatello, ScottishPower filed with the Commission a Notice of Merger Credit Commitment as well as a Notice of Irrigator Service Commitments.

1. Notice of Merger Credit Commitment

The Joint Applicants reached a settlement agreement with the Staff of the Oregon Public Service Commission in the merger proceeding pending in that state and, pursuant to the "most favored nation" proposal made in this state (discussed below), ScottishPower offered a rate credit as a condition of merger approval. Pursuant to that offer, ScottishPower and PacifiCorp shall provide guaranteed merger-related cost of service reductions for four years through an annual merger credit on customers' bills. The amount of the credit shall be $1.6 million per year for the years 2000, 2001, 2002, and 2003. The total credit in years 2000 through 2003 will be $6.4 million. The merger credit is discussed in greater detail in Merger Approval Condition No. 3 as well as Section III.B of this Order.

2. Notice of Irrigator Service Commitments

On August 27, 1999, ScottishPower filed a Notice of Irrigator Service Commitments of Scottish Power plc and PacifiCorp. In that Notice, the Joint Applicants propose numerous recommendations that target the irrigation customers of southeastern Idaho in an attempt to improve service to those customers. The irrigator service commitments are discussed in greater detail in Merger Approval Condition Nos. 14-18 as well as Section III.F.5 of this Order.

3. Post Hearing Briefs

Pursuant to a Commission Scheduling Order, the parties to the technical proceeding were provided the opportunity to submit post-hearing briefs in this case. Briefs were submitted by the Joint Applicants, the Irrigators, the Public Power Council and Solutia and summarized the positions taken by those parties during the technical hearing.

4. Post Hearing Motions

On August 30, 1999, Solutia filed a motion pursuant to Rule 56 of the Commission's Procedural Rules (IDAPA 31.01.01) and Rule 37(a) of the Idaho Rules of Civil Procedure for an

Order compelling a response from the Joint Applicants to a supplemental data request submitted to them by Solutia on August 18, 1999. On the same date, Solutia also filed a motion to reopen the technical proceeding in this case for the purpose of introducing new testimony and re-cross-examining witnesses. Similarly, on September 13, 1999, the Irrigators filed a motion to reopen the technical proceeding in this case. On September 27, 1999, the Commission issued Order Nos. 28158 and 28165 denying the motions of Solutia and the Irrigators, respectively, to reopen the technical proceedings. In addition, Order No. 28158 denied Solutia's Motion to Compel Response to Production requests. The rationale for the Commission's Orders is set forth therein and will not be repeated here.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Irrigators' Motion to Dismiss

At the commencement of the technical hearing, Counsel for the Irrigators made a verbal motion to dismiss the Application in this case. The basis for the Irrigators' motion was that it is "the intent of the Application to increase" the Irrigators' rates. Tr. p. 41. Moreover, Counsel for the Irrigators argued that "[o]ne cannot pay a billion dollar premium for an enterprise and not expect to have some impact on rates." *Id.* The motion further contended that the Joint Applicants have failed to demonstrate that rates will not increase as a result of the merger. The Commission issued a ruling from the bench that it needed to hear the evidence to know whether or not the criteria of *Idaho Code* § 61-328 had been satisfied. Tr. pp. 48-49.

We find:

As indicated below, we find that the Joint Applicants have satisfied their burden of proof that the merger will not cause rates for PacifiCorp's customers to increase. Consequently, the verbal motion to dismiss the Application made by the Irrigators is hereby denied.

B. Conditions of Merger Approval

The conditions of merger approval that we hereby impose are considerable in quantity and scope and, therefore, we have listed them separately in this section of the Order for clarity and ease of reference. Most of the following conditions will be discussed in greater detail later in this Order.

RATES

1. Rates will not increase as a result of the merger.

2. At a minimum, ScottishPower shall not seek a general rate increase for its Idaho service territory effective prior to January 1, 2002.

3. ScottishPower and PacifiCorp shall provide guaranteed merger related cost-of-service reductions for four years through an annual merger credit. The amount of the credit shall be $1.6 million per year for the years 2000, 2001, 2002 and 2003. The total credit in years 2000-2003 will be $6.4 million. The merger credit shall be allocated among PacifiCorp's retail tariff customers on the basis of a percentage of the customer bill, exclusive of taxes. At the end of each year, the aggregate amount of the credit allocated in that year shall be calculated. These calculations shall be available for audit by the Commission Staff. In the event the merger credit does not equal $1.6 million in any of the first three years, the excess or shortfall shall be applied to the amount due in the following year.

   For each of the years 2002 and 2003, ScottishPower and PacifiCorp may reduce or offset the $1.6 million merger credit to the extent that cost reductions related to the merger are reflected in rates.

   The dates set forth in this Condition assume that the merger transaction closes in 1999. If closing is delayed, ScottishPower and PacifiCorp may adjust the dates so that the merger credit begins as soon as practicable but not later than 30 days after the closing date.

   In the event that restructuring of the electricity business occurs in Idaho prior to the end of the four years for payments of the merger credit, the Commission shall determine at that time how the outstanding merger credit shall be paid.

   Any other terms required to implement this merger credit shall be included in the merger credit tariff for approval by the Commission.[4]

4. No later than six months after the closing date of the merger, ScottishPower and PacifiCorp shall provide, in the form of an informational filing, a merger transition plan to the Commission. The plan shall include anticipated time lines, actions necessary to implement the merger and realize the proposed benefits (including

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[4] Notice of Merger Credit Commitment filed August 20, 1999

expected cost savings), and the estimated associated capital expenditures and expenses and anticipated workforce changes.[5]

QUALITY OF SERVICE

5. ScottishPower shall include in its transition plan what it intends to do regarding work force issues and the maintenance of adequate service in Idaho. In this regard, the Commission notes that it considers "adequate service" as the bare minimum necessary for compliance with § 61-302. We expect that the Company, through the application of the many merger approval conditions imposed by this Order, as well as the Company's diligent efforts, shall begin addressing the customer service problems that PacifiCorp's customers are currently experiencing.

6. Within a reasonable time after closing, ScottishPower/PacifiCorp shall implement the Performance Review Committee procedures described in Exhibit 226.[6] This process shall be in addition to, and not in derogation of, any other remedy or power of the Commission.[7]

7. ScottishPower/PacifiCorp shall implement the Network Performance Standards, Service Performance Standards and Customer Guarantees described in the direct testimony of Bob Moir and Exhibit 208.

8. Within a reasonable time after closing PacifiCorp shall file for approval a tariff describing the Non-Performance Payments to customers associated with the Customer Guarantees described in the Direct Testimony of Bob Moir.[8]

9. PacifiCorp will fund expenditures required to implement the service standard commitments from efficiency savings and redirected internal funding.[9]

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[5] Tr. p. 595

[6] This Exhibit was offered during the technical hearing by ScottishPower witness MacLaren in response to Staff witness Sterling's proposal to impose penalties in the event PacifiCorp's network performance falls below baseline levels.

[7] Tr. p. 419--424

[8] Tr. p. 390--391

[9] Tr. p. 640

10. In the event ScottishPower/PacifiCorp become obligated to pay penalties under the network performance standards, the disposition of such funds shall be determined by the Commission at the time penalties are assessed [ScottishPower/PacifiCorp agree to accept the Commission's decision in this regard].[10]

11. The proposed network performance standards, customer service performance standards, and customer guarantees will be reviewed after two years of experience with these standards to see if any modifications may need to be made to better maintain or improve network reliability, network safety, and customer satisfaction. In this regard, no later than July 1, 2002, PacifiCorp/ScottishPower will file with the Commission and all intervenors in this Docket a report detailing the companies' experience with the established standards and any proposed changes thereto. Pending any changes resulting from this report, the existing service standards and customer guarantees would remain in place.[11]

12. In addition to their network and customer service performance standards, PacifiCorp/ScottishPower agree to comply with any service standards adopted by the Commission. The penalties associated with the PacifiCorp/ScottishPower network and customer service performance standards will not apply to any service standards adopted by the Commission. The provisions of this paragraph will not affect any penalties adopted by the Commission as part of any rules.

13. PacifiCorp/ScottishPower will provide an annual report to the Commission, for five years following close of the merger, showing the reliability of the system on a statewide basis. This report shall include SAIDI, SAIFI and MAIFI data for the previous year, in addition to identification of the five worst circuits based on CPI data. The first such report shall be filed on or before September 1, 2001.

14. ScottishPower/PacifiCorp will make available prior to the next irrigation season a dedicated Irrigation Specialist in the Idaho service territory. This Specialist will be available at the local Utah Power offices in Rexburg and Shelley for consultation appointments. The

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[10] Tr. p. 430

[11] Conditions 11, 12 and 13 are adapted from the Wyoming Stipulation, Exhibit No. 108, as explained by Mr. MacRitchie, Tr. p. 603-635

effectiveness of this service will be reviewed at the end of the 2001 irrigation season.[12]

15. ScottishPower/PacifiCorp will extend the Irrigator's HOTLINE facility in the Wasatch Business Center to 7 days a week, from 7:00 a.m. to 7:00 p.m. The expansion to this successful, customized service will provide greater availability for responding to Irrigator issues.

16. ScottishPower/PacifiCorp will publish the Irrigator HOTLINE telephone number in the public telephone directory along with the other Utah Power numbers.

17. ScottishPower/PacifiCorp will work with the Irrigators to better identify, on a geographical basis, the location of each electricity service location. This geographical description should be used when the Irrigator is unable to provide either the Site Identification Number (Meter Number) or the Account Number. (The meter number or account number will remain the preferred terms of reference for site identification.) This proposal will enable the Business Center and the customer to more effectively communicate and locate the service location in question, particularly during an outage. The Irrigators and the Company will continue to ensure these descriptive locations are updated as required.

18. ScottishPower/PacifiCorp will review in conjunction with the Irrigators the account format to identify improvements that can be made to improve clarity.

WATER RIGHTS

19. ScottishPower and PacifiCorp shall insure that future operations of the Bear River/Bear Lake system will continue in a manner consistent with its historic operation and within the constraints of irrigation water delivery, drought management, the Bear River Compact, the 1995 Bear Lake Settlement Agreement and the multi-state Agreement Regarding the Bear River System executed on October 5, 1999 by ScottishPower and PacifiCorp.[13]

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[12] Conditions 14-18 are contained in the Notice of Irrigator Service Commitments of Scottish Power plc and PacifiCorp, filed August 27, 1999.

[13] Tr. p. 490

20. ScottishPower and PacifiCorp shall abide by the terms of the Memorandum of Agreement Regarding Ashton-St. Anthony Projects executed by the Companies on October 22, 1999.

REGULATION OF PACIFICORP AND SCOTTISHPOWER

21. To assign costs to PacifiCorp and amounts subject to allocation or direct charges, the Commission or its agents may audit the records of ScottishPower which are the basis for charges to PacifiCorp. ScottishPower will cooperate fully with such Commission audits.[14]

22. ScottishPower and PacifiCorp will provide the Commission access to all books of account, as well as all documents, data and records of their affiliated interests, which pertain to any transactions between PacifiCorp and its affiliated interests.

23. PacifiCorp will maintain its own accounting system, separate from ScottishPower's accounting system. All PacifiCorp financial books and records will be kept in Portland, Oregon, and will continue to be available to the Commission upon request at PacifiCorp's offices in Portland, Salt Lake City, Utah, and elsewhere in accordance with current practice.

24. ScottishPower and PacifiCorp will exclude all costs of the transaction from PacifiCorp's utility accounts.

25. PacifiCorp will maintain separate debt, and if outstanding, preferred stock ratings.

26. ScottishPower and PacifiCorp will provide the Commission with unrestricted access to all written information provided to common stock, bond, or bond rating analysts, which directly or indirectly pertains to PacifiCorp.

27. ScottishPower and PacifiCorp agree to comply with all existing Commission statutes and regulations regarding affiliated interest transactions, including timely filing of applications and reports.

28. ScottishPower will not subsidize its activities by allocating to or directly charging PacifiCorp expenses not authorized by the Commission to be so allocated or directly charged.

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[14] Conditions 21-28 and 38 are contained in the Direct Testimony of Robert Green/Graham Morris, Tr. pp. 531-532.

29. The Commission shall have the right to inspect the relevant records of PacifiCorp's holding company, parent affiliate or subsidiaries that engage directly in any transaction with the regulated utility which then result in expenses being incurred, allocated or otherwise attributed to the regulated services of PacifiCorp.

30. On a quarterly basis appropriate senior representatives of ScottishPower/PacifiCorp shall meet with the Commission and its staff to discuss any matters of concern to Idaho.[15]

31. In addition to compliance with *Idaho Code* § 61-901 *et seq.*, for three years following the closing date of the merger, PacifiCorp/ScottishPower will report to the Commission, as soon as practicable prior to issuance, each debt or equity issuance made by PacifiCorp or ScottishPower in excess of $75 million and having a term greater than one year. This report shall include the amounts, terms and conditions of the issuance, to the extent known, and the anticipated impact, if any, on the capital structure of PacifiCorp and ScottishPower.

32. Despite the alternative corporate structures shown in the PacifiCorp and ScottishPower proxy statements, PacifiCorp and ScottishPower shall advocate before the Securities and Exchange Commission, shareholders, and other jurisdictions, a corporate structure that contains a holding company as a parent and does not include a new separate entity to provide corporate services, as proposed in the Amended and Restated Merger Agreement. PacifiCorp and ScottishPower agree to keep the Commission Staff informed and consult with the Commission Staff regarding any recommendations by jurisdictional regulatory bodies to include a separate entity to provide corporate services in the post-merger corporate structure. If a change in the proposed corporate structure as reflected in the Amended and Restated Merger Agreement, including the current PacifiCorp corporate structure, (i) is mandated in a merger-related proceedings by a jurisdictional regulatory body other than Idaho or shareholders or (ii) becomes advisable in the future, PacifiCorp/ScottishPower shall so advise the Commission and the Staff in writing, within 30 days, along with the perceived or anticipated associated changes to allocations or other matters that may be required by the changed corporate structure. PacifiCorp/ScottishPower and the Commission and its Staff will support before the Securities and Exchange Commission and other appropriate regulatory authorities PacifiCorp's state divisional

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[15] Tr. p. 81

operation and interjurisdictional allocation of costs as currently agreed upon.

33. Any diversified holding and investments (e.g., non-utility business or foreign utilities) of ScottishPower and PacifiCorp shall be held in a separate company other than PacifiCorp, the entity for utility operations. Provisions shall be provided for each of these diversified activities to fully separate accounting functions and to provide full cost allocations. This condition shall not prohibit the holding of diversified businesses and investments by affiliates of PacifiCorp, such as PacifiCorp Group Holdings Company.

34. On June 18, 1999, ScottishPower/PacifiCorp provided the Commission and other jurisdictional state rate regulators a proposed methodology for the allocation of corporate and affiliate investments, expenses, and overheads and a statement of where each of the ScottishPower principal corporate departments will sit in the corporate structure. This document would constitute a draft of what is to be filed regarding cost allocations with the Securities and Exchange Commission. On October 29, 1999, PacifiCorp/ ScottishPower scheduled a conference/meeting with state and other interested regulators to discuss the proposed corporate and affiliate cost allocation methodology. Further conferences/meetings will be scheduled as needed to discuss the cost allocation issue.

35. No later than 90 days after the closing date of the merger, ScottishPower/PacifiCorp shall file its proposed corporate and affiliate cost allocation methodology with the Securities and Exchange Commission, OFFER, and OFWAT.

36. Within 30 days of receiving all state, federal, and foreign regulatory approvals of the final corporate and affiliate cost allocation methodology, a written document setting forth the final corporate and affiliate cost methodology shall be submitted to the Commission and the Staff as a compliance filing related to this merger application. On an on-going basis, the Commission shall also be notified of anticipated or mandated changes to the corporate and affiliate cost allocation methodologies.

37. PacifiCorp/ScottishPower shall not subsidize its non-regulated businesses with its regulated businesses.

38. PacifiCorp/ScottishPower shall not assert in any future Idaho proceeding that the provisions of the Public Utility Holding Company Act of 1935 or the related *Ohio Power v. FERC* case preempt the Commission's jurisdiction over affiliated interest

transactions and will explicitly waive any such defense in those proceedings.

39. On an annual basis on or before July 1st of each year, PacifiCorp shall file an affiliate transactions report which includes the following: an organizational chart showing the parent company and all subsidiaries; a narrative description of each affiliate with which PacifiCorp does business; the revenue for each affiliated entity with which PacifiCorp does business: a report of transactions between each affiliate and PacifiCorp; and a description of any intercompany loans. Additionally, PacifiCorp/ScottishPower shall not assert in any Idaho proceeding preemption by a United Kingdom or other foreign regulator over cost allocations or affiliate interest transactions.

40. PacifiCorp/ScottishPower shall notify the Commission subsequent to ScottishPower's board approval and as soon as practicable following any public announcement of any acquisition of a regulated or nonregulated business representing 5% or more of the market capitalization of ScottishPower.

41. On an annual basis on or before July 1st in the year following closing of the merger and for five years thereafter, PacifiCorp shall provide the Commission with a report detailing the utility's proportionate share of the holding company's (i) total assets; (ii) total operating revenues; (iii) operating and maintenance expense; and (iv) number of employees.

42. In the event the Public Utility Holding Company Act of 1935 is repealed, PacifiCorp/ScottishPower shall, within 60 days of the date of the repeal, discuss with the Commission and the Commission Staff how cost allocation and affiliate transaction commitments contained in this Order need to be modified in light of that circumstance.

43. Nothing in these conditions shall preclude the Commission from participating in related proceedings before the Federal Energy Regulatory Commission or the United States Securities and Exchange Commission.[16]

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[16] Conditions 32-43 are adapted from the Wyoming Stipulation, Exhibit 108, as explained by Mr. MacRitchie, Tr. pp. 603—635

INVESTMENT IN RENEWABLE RESOURCES

44. In any future rate proceeding filed with the Commission, PacifiCorp/ScottishPower shall make a showing that any additions of renewable resources to the rate base or the revenue requirement first appearing in that rate proceeding are prudent investments.

ADDITIONAL CONDITIONS

45. Pursuant to *Idaho Code* § 61-624, the Commission, after notice and opportunity for hearing, may amend its final order to include as an additional condition to the final order any system-wide benefit that may be ordered by another regulatory commission with jurisdiction to approve the transaction. Excluded from "system wide benefits" are commitments or benefits that are unique to a particular jurisdiction and situations where, through negotiation in a particular jurisdiction, certain elements of the package may be enhanced while others are reduced to produce a total package that accommodates the unique requirements of that jurisdiction.[17]

ENFORCEMENT

46. In the event that PacifiCorp/ScottishPower do not comply with the above conditions, the Commission may make, to the extent permitted by Idaho law and regulatory practice, appropriate ratemaking adjustments to give full effect to these conditions. The Commission may exercise its authority to make, for retail ratemaking purposes, adjustments for inappropriate allocations of costs from nonregulated business to PacifiCorp.

We find:

We hereby adopt all of the foregoing Conditions of Merger Approval.

C. Statutory Standards Governing the Merger

There were many references throughout this case by the parties and members of the public, to the statutory standards by which we are bound in our decision whether to approve the proposed merger. We find that, in some instances, those statutes and standards were misinterpreted, misconstrued, and even misquoted. Thus, we set them forth below as they appear in the Idaho Code and render what we believe to be an appropriate interpretation of their general meaning. First, *Idaho Code* § 61-328 provides:

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[17] Tr. p. 627, Exhibit 220.

> **61-328. Electric utilities — Sale of property to be approved by commission.** — No electric public utility or electrical corporation as defined in chapter 1, title 61, Idaho Code, owning, controlling or operating any property located in this state which is used in the generation, transmission, distribution or supply of electric power and energy to the public or any portion thereof, shall sell, assign or transfer, directly or indirectly, in any manner whatsoever, any such property or interest therein, or the operation, management or control thereof, or any certificate of convenience and necessity or franchise covering the same, except when authorized to do so by order of the public utilities commission of the state of Idaho. Such authorization and order shall be issued only following public notice and hearing, upon verified application of the parties setting forth such facts as the commission shall prescribe or require, and if the commission shall find that the public interest will not be adversely affected, that the cost of and rates for supplying service will not be increased by reason of such transaction, and that the applicant for such acquisition or transfer has the bona fide intent and financial ability to operate and maintain said property in the public service; provided, that no such order or authorization shall be issued or granted to any applicant or party coming within the prohibitions set forth in this act. The commission shall have power to issue said authorization and order as prayed for, or to refuse to issue the same, or to issue such authorization and order with respect only to a part of the property involved, and may attach to its authorization and order such terms and conditions as in its judgment the public convenience and necessity may require. (Emphasis added.)

In summary, § 61-328 provides that the merger "shall" be approved so long as the Joint Applicants have convinced us that (1) the merger will not adversely affect the public interest; (2) the merger will not cause PacifiCorp's costs and rates to increase, and: (3) the Joint Applicants have the bona fide intent and financial ability operate the PacifiCorp system in the public service.[18]

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[18] *Idaho Code* § 61-328 also provides that no merger authorization shall be granted to "any applicant or party coming within the prohibitions set forth in this Act." Section 61-327 prohibits the acquisition of public utility property by any government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation existing under the laws of any other state or any representative of the foregoing. The Joint Applicants are privately-owned corporations that do not fall within the parameters of § 61-327 nor, consequently, this particular prohibition of § 61-328.

Because the foregoing statute pertains to the sale or transfer of ownership interest in electric facilities located in Idaho, it applies to the merger in this case. In addition to our jurisdiction under § 61-328, this Commission also has jurisdiction over the merger pursuant to the "securities issuance" statutes found in Title 61, Chapter 9 of the Idaho Code which require Commission approval of the issuance of "instruments of security" [including common stock]. Section 61-902 also adopts the term "public interest" and refers generally to the other provisions of Title 61. That statute provides:

> **61-902. Petition for authority — Notice and hearing. — Order Refund.** — Such public utility shall, by written petition, filed with the commission and setting forth the pertinent facts involved, make application to the commission for an order authorizing the proposed issue, assumption or guarantee of securities, and the application of the proceeds therefrom for the purpose specified in such application. The commission shall, after such hearing and upon such notice as the commission may prescribe, enter its written order approving the petition and authorizing the proposed securities transactions, unless the commission, for good cause shown, shall find: That such transactions are inconsistent with the proper performance by applicant by service as a public utility; or that the purpose or purposes thereof are not permitted by this act.

We will provide a more definitive interpretation of these statutes and their standards later in this Order. Initially, however, we wish to clear up some misconceptions that certain parties apparently entertain regarding the general nature of the statutory standards guiding our decision in this case. First, *Idaho Code* § 61-328 does not require a finding that PacifiCorp's rates will decrease as a result of the merger. In fact, the statute mandates that rates not increase because of the merger. The distinction is significant. In any event, as explained below, the merger proposed in this case will result in rates for PacifiCorp customers that are lower as a direct result of the merger. Second, § 61-328 does not require that the public interest be enhanced by the merger. Rather, this standard mandates that the public interest not be adversely affected. Again, this is an important distinction. Finally, the evidence must establish that the Joint Applicants in this case have the bona fide intent and financial ability to operate and maintain the PacifiCorp system in the public interest.

The securities issuance statutes are more general in nature than § 61-328. *Idaho Code* § 61-902 simply requires that the proposed securities issuance is not inconsistent with the public interest and that it is not unnecessary or inappropriate for or inconsistent with the proper

performance by the Joint Applicants of service as a public utility and that it is not prohibited generally by Title 61. Because we find that the merger proposed by PacifiCorp and ScottishPower, when subject to the conditions imposed by this Order, does not violate the three part test contained in § 61-328, we necessarily find that the standards for approval of a securities issuance contained in § 61-902 have been satisfied as well.

In issuing this Order, we note that the Idaho Public Utilities Commission is a creature of statute. It has only those powers granted to it by statute. *Afton Energy, Inc. v. Idaho Power Co.*, 111 Idaho 925,729 P.2d 400 (1986). We are guided by the enabling statutes contained within Title 61 and, to some extent, Title 62 of the Idaho Code. *Id.* We were urged repeatedly throughout this proceeding by various parties and members of the public to abandon the statutory mandates governing this merger and to adopt criteria that are inconsistent with and contrary to the Idaho Code. Notwithstanding the sentiments of the public and parties, and regardless of how the laws of other states are fashioned, we are legally bound to follow the letter of the law in Idaho and to adhere to the standards set forth in the aforementioned statutes. We note that the areas of concern we enumerated in Order No. 27939 issued following the prehearing conference all fall within one of the three criteria contained in § 61-328. We find that all of those areas of concern have been adequately addressed by this Order.

We wish to emphasize the importance of the participation of the parties to this proceeding and of the input provided by members of the general public. The testimony we heard during the course of four separate public hearings was at times passionate, but always motivated by genuine concern of those affected by our decision in this case. The comments articulated by the public are the basis for many of the 46 merger approval conditions we impose in this case. We firmly believe that those conditions will lead to significantly improved service at reasonable rates for PacifiCorp's Idaho customers.

In the following sections of this Order, we discuss the statutory standards of Idaho Code §61-328 in reverse order to reflect the degree of emphasis that was given them by the parties to this proceeding and by members of the public.

D. Bona fide Intent and Financial Ability

This particular standard, and the related issues that were raised, are arguably the least contentious in this case. While some parties questioned the intent and ability of ScottishPower to implement the proposed customer service and system performance improvements, and to achieve

the targeted cost savings, there was relatively little doubt expressed that PacifiCorp and ScottishPower have the intent and financial ability to continue operating as a public utility following the merger.

1. Bona fide Intent

The fact that the Joint Applicants have the bona fide intent to operate the PacifiCorp system is evident by, among other things, the fact that the merger will have minimal effect on the location of PacifiCorp's management, its headquarters, its books and records and its personnel. It is further evident by the considerable service and reliability improvements to which ScottishPower has committed.[19] ScottishPower executive director and board of directors member Richardson testified that PacifiCorp would be an indirect, wholly-owned subsidiary of ScottishPower and would operate on a stand-alone basis headquartered in Portland, Oregon, "with operations in substantially the same structure as they are today." Tr. p. 63. Richardson further recognized that "the Commission will continue to exercise precisely the same degree of regulatory oversight over PacifiCorp as it does today." Tr. p. 63. Richardson argues that because of the more accurate performance measurements and reporting of results proposed by ScottishPower, the merger "should actually increase this Commission's ability to monitor PacifiCorp's performance." Tr. p. 63.

ScottishPower's predecessors have been supplying electricity to the central belt and the south of Scotland for over 100 years. Tr. p. 59. The Company is now a leading multi-utility business in the U.K. with approximately 5 million customers. It has considerable experience in the acquisition of other utilities and has had notable success in implementing improvements to those utilities it has acquired. Tr. pp. 60-61.

Richardson pointed out that with respect to the management of PacifiCorp, ScottishPower intends to utilize the same approach it adopted in the acquisition of other utilities in the U.K. He testified that "there will be very few imports of U.K. personnel into PacifiCorp." Tr. p. 71. Current PacifiCorp employees have been and will continue to be a key strength of the organization, Richardson contends. *Id.* Decisions regarding the operation of PacifiCorp will be

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[19] Discussed in Section III.F.1 below.

made in the U.S. Richardson testified that appropriate decision making authority will be delegated to managerial staff so that decisions can be made locally. Tr. p. 71.

ScottishPower also presented the testimony of Robert Green who was employed by the Company at the time his direct testimony was filed but subsequently took a position with another business. His testimony was sponsored at the technical hearing by Graham Morris. Green was tentatively slated to be appointed as the chief financial officer of PacifiCorp. Morris is the head of finance at ScottishPower's subsidiary Manweb. Green/Morris note that following the merger, there will be some elimination of overlapping corporate functions although it is anticipated that relatively few ScottishPower personnel will relocate to the U.S. For the most part, corporate functions will continue to be undertaken by the current staff. Tr. p. 522.

As discussed later in this Order, ScottishPower has agreed to a package of customer service and performance reliability standards as further evidence of the merged utility's intent to continue operation in the public interest. *See*, *generally*, testimony of Bob Moir, Tr. pp. 378-404.

ScottishPower has also committed to contributing $5 million to the PacifiCorp Foundation following the conclusion of the merger. ScottishPower also commits to maintaining the level of PacifiCorp's other community-related involvement both in terms of monetary and in-kind contributions along with other community efforts. Tr. pp. 67-68. ScottishPower has committed to honoring all existing labor contracts. Tr. p. 72.

We find:

There is some overlap between this particular standard and the other two contained in *Idaho Code* § 61-328. To some extent, therefore, we reference our findings of fact and conclusions of law made in later sections of this Order. To summarize, however, we find ample evidence that the merged utility has the bona fide intent to continue the operation of the PacifiCorp system in the public service. First, the merger will have relatively little effect on the existing personnel of PacifiCorp. Operational decision making will continue to be made at the local level. For all intents and purposes, the merged utility will continue to operate as it always has, albeit with considerable improvement in customer service and performance levels. Corporate management will continue to be located in the Pacific Northwest as will books and records.

Second, ScottishPower's commitment to invest in the PacifiCorp Foundation and its commitments to become highly involved in the local community is further evidence of its bona fide intent to operate in the public service. Third, this Commission will continue to exercise the same degree of regulatory oversight of PacifiCorp that it always has. So long as PacifiCorp continues to operate as a public utility in the state of Idaho and, assuming there are no legislative changes diminishing or eliminating this Commission's regulatory authority, we will continue to have the power to "supervise and regulate...and to do all things necessary" with respect to the activities of PacifiCorp. *Idaho Code* § 61-501. In fact, ScottishPower's commitment to establish customer service and performance level baselines and to more accurately and frequently monitor its results and report those results to this Commission, as discussed below, will enhance our ability to regulate PacifiCorp.

We also note that the merged utility will continue to be subject to *Idaho Code* § 61-328; the same statute governing our review of this merger. That statute applies to the sale, assignment and transfer of generation, transmission, distribution or supply property located in this state. Such transactions are prohibited without the prior consent of this Commission.

Finally, concerns were expressed during the public hearings, and the issue was raised by this Commission during the prehearing conference, regarding the possibility that ScottishPower might, following merger approval, attempt to reduce its work force in Idaho as a cost savings measure. We acknowledge this to be a fairly typical aftereffect of business mergers in today's competitive world. While it certainly could be considered micro-management and outside of this Commission's authority to require ScottishPower to maintain its existing staff, the possibility of any reduction in the Company's Idaho-based work force concerns us. Specifically, we are concerned about the effect that work force reduction might have on PacifiCorp's ability to maintain adequate service as mandated by *Idaho Code* § 61-302 which provides:

> **61-302. Maintenance of adequate service.** — Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable.

Based on concerns raised during the public hearings in this case, the Commission directed its Staff to begin an informal investigation into the quality of service currently being provided by PacifiCorp. That investigation is still ongoing. Additionally, ScottishPower

responded to the public's concerns when it filed a commitment to add an "irrigation specialist" to its Idaho workforce. Because of the importance of this issue, we hereby impose, as an additional condition of the merger (Merger Approval Condition No. 5), that ScottishPower include in its transition plan an indication of any significant action it intends to take regarding its work force and the maintenance of adequate service in Idaho. We note that we consider "adequate service" as the bare minimum necessary for compliance with § 61-302.

We also note that some parties to the technical proceeding criticized ScottishPower for its failure to have completed its merger transition plan prior to seeking regulatory approval. We find that it would be nearly impossible for ScottishPower to file its transition plan prior to obtaining regulatory approval in all states because the Company could not know all the conditions to which it will ultimately be subjected. The transition plan will need to take those conditions into account. We have the ability to shape the transition plan by imposing the conditions contained herein and ensuring that the Joint Applicants understand the concerns and requirements of PacifiCorp's Idaho customers.

2. Financial Ability

According to ScottishPower witnesses Green/Morris, ScottishPower is among the 20 largest investor-owned electric utilities in the world. Tr. p. 534. ScottishPower's bond rating as of December 1998 was Aa3 by Moody's and A+ by Standard and Poor's. *Id.* ScottishPower intends to strengthen the capital structure of PacifiCorp by proposing an actual capital structure equivalent to that of comparable A rated electric utilities in the U.S. with a common equity ratio for PacifiCorp no less than 47%. Tr. p. 525.

Staff witness Carlock testified that she is satisfied that the Joint Applicants have the financial ability to continue operating PacifiCorp's system in the public interest based upon her review of financial statements, due diligence reports, disclosure letters, board meeting minutes, numerous production requests in this case and meetings with Company representatives. Tr. p. 879.

We find:

One of the primary reasons given by PacifiCorp, through the testimony of its executive vice president and chief operating officer Richard O'Brien for its decision to merge with ScottishPower was the latter's strong financial position. Tr. p. 246. In fact, there was little if any concern expressed during this proceeding by anyone regarding ScottishPower's financial

position and that Company's financial ability to continue to operate the PacifiCorp system in the public interest. We find, therefore, that the Joint Applicants have satisfied their burden of proof that the merged PacifiCorp will have the financial ability to operate its system in the public service.

E. Rates Will Not Increase as a Result of the Merger

1. Public Comment

A considerable number of those who testified at the public hearings expressed dissatisfaction with the rates they currently pay to PacifiCorp. There is a commonly held perception among PacifiCorp's Idaho customers that they pay considerably higher rates than comparable Idaho Power customers and PacifiCorp customers in other states. Some customers also compared their rates to those paid by customers of nearby municipal and cooperative utilities not regulated by this Commission. Many customers expressed a desire that Idaho Power purchase PacifiCorp's southeastern Idaho system under the assumption that their rates would decrease if that were to occur. Some of PacifiCorp's Idaho customers believe that, if the merger is approved, they will be subject to rate increases by a foreign corporation whose sole motive is to siphon as much revenue as possible from PacifiCorp and its customers.

2. Joint Applicants

The Joint Applicants did not initially propose a rate reduction as a condition of the merger. Rather, the Company simply argued that rates would not increase as a result of the merger and, therefore, the statutory requirements of *Idaho Code* § 61-328 would be satisfied. The Joint Applicants did argue, however, that cost savings attributable to the merger would ultimately result in rates lower than they otherwise would be. Nonetheless, there was no firm commitment offered as to when those cost savings would be reflected in rates. For example, PacifiCorp's O'Brien testified that the merger "will result in significant efficiencies and cost savings by the end of the five-year period" discussed by witness MacRitchie. Tr. p. 253. In the normal course, O'Brien concluded, cost savings will be realized in lower rates through a cost of service rate setting process resulting in "prices lower than they would be without the transaction." Tr. p. 253. O'Brien testified that he did not believe a rate reduction was necessary as a condition of merger approval. He posited that the expectation that the merger will result in better and more reliable service is "more than enough to constitute positive net benefits to customers." Tr. p. 254.

ScottishPower witnesses Green/Morris testified that "[t]here will be some reduction in overlapping corporate functions." Tr. p. 522. Green/Morris testified that ScottishPower will reduce corporate costs and overheads, where possible, by streamlining support functions and selectively eliminating redundant activities. They testified that ScottishPower will achieve efficiencies in operational costs by an amount greater than could be achieved by PacifiCorp. Moreover, ScottishPower proposes to increase overall system performance and to enhance customer service, that will, over the long-term, produce efficiencies and lower costs. Tr. p. 523.

Green/Morris further testified that because of the merger, "the cost of PacifiCorp's borrowings can be expected to be lower after the transaction." Tr. p. 524. This is because, given ScottishPower's financial strength, PacifiCorp should be viewed by risk analysts as being less risky for debt acquisition purposes. *Id.*

Green/Morris contend that PacifiCorp will bear lower corporate costs than is currently the case. PacifiCorp will be assigned a fixed sum of corporate costs that is less than it currently incurs. In fact, by the end of the third year following the merger, ScottishPower expects to achieve approximately $15 million of annual savings in corporate costs which, when offset by $5 million of associated cost increases, will produce a net reduction of $10 million annually in corporate costs. ScottishPower originally committed to reflecting this reduction in PacifiCorp's results of operation and, thus, in rates. Tr. p. 526.[20] ScottishPower further commits to providing an analysis of its proposed allocation of corporate costs within three months of completion of the merger transaction. The Company will file this analysis and proposed allocation with each of the five state commissions from which ScottishPower is seeking merger approval. Tr. p. 527.

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[20] This commitment was later superseded by ScottishPower's merger rate credit proposal (Merger Approval Condition No. 3).

Green/Morris do not anticipate that a material number of affiliate transactions involving PacifiCorp and other subsidiaries of ScottishPower will take place. For instance, Scottish Telecom, a ScottishPower subsidiary, which operates solely within the UK, has no plans to operate within the U.S. The same holds true with respect to the other electric and/or regulated operations of the other affiliates and subsidiaries of ScottishPower. The other main affiliates within the ScottishPower group are Southern Water, which supplies water and waste water services to customers in the southeast of England, and ManWeb, which provides electricity service to customers in northwest England and north Wales. Given the geographic separation between these affiliates and PacifiCorp, there will be very few, if any, transactions between them. Tr. p. 528.

For any transactions that do occur between PacifiCorp and other ScottishPower affiliates, the Company proposes to price any goods and services at market rates. In the case of cost allocations which become affiliated interest activities only because of the structure of the transaction, ScottishPower proposes that an at-cost-basis be used. Tr. p. 528.

Regarding access to books and records, Green/Morris state that the books, records, documents, and other information relating to PacifiCorp will be located in Portland, Oregon and will continue to be available to the Commission upon request at PacifiCorp's offices in Portland, Salt Lake City, Utah and elsewhere. Moreover, the Commission will have reasonable access to the books, records, documents and other information of ScottishPower and its affiliates which pertain to transactions between PacifiCorp and all ScottishPower's affiliated interests. Tr. p. 530.

ScottishPower will utilize accounting policies and procedures consistent with its historical operation, will use the Federal Energy Regulatory Commission's system of accounts, and will further comply with the Idaho Commission's accounting rules. Tr. p. 530. The costs incurred by ScottishPower to consummate the merger (referred to as "transaction costs") will be borne by ScottishPower's shareholders and not PacifiCorp's ratepayers. Tr. p. 534.

During the technical hearing, ScottishPower introduced Exhibit No. 220 which contains what became known as the "most favored nation" provision. Essentially, this provision constitutes ScottishPower's commitment that any "system benefits" agreed to or imposed in other states will apply in Idaho. The effect of this is to ensure that PacifiCorp's Idaho customers receive at least as favorable treatment as the Company's customers in other states.

Following the conclusion of the technical hearing, ScottishPower filed its Notice of Merger Credit Commitment. In that proposal, ScottishPower and PacifiCorp commit to guaranteed merger-related cost of service reductions for four years through an annual merger credit. The amount of the credit shall be $1.6 million per year for the years 2000, 2001, 2002, and 2003. The total credit in years 2000 through 2003 will be $6.4 million. The merger credit shall be allocated among PacifiCorp's retail tariff customers on the basis of the percentage of the customer bill, exclusive of taxes. At the end of each year, the aggregate amount of the credit allocated in that year shall be calculated. These calculations shall be available for audit by the Commission Staff. In the event the merger credit does not equal $1.6 million in any of the first three years, the excess or shortfall shall be applied to the amount due in the following year.

For each of the years 2002 and 2003, ScottishPower and PacifiCorp may reduce or offset the $1.6 million merger credit to the extent that cost reductions related to the merger are reflected in rates. The dates set forth in the credit commitment assume that the credit transaction closes in 1999. If the closing is delayed, ScottishPower and PacifiCorp may adjust the dates so that the merger credit begins as soon as practicable but not later than 30 days after the closing date.

In the event that restructuring of the electricity business occurs in Idaho prior to the end of the four years for payments of the merger credit, the Commission shall determine at that time how the outstanding merger credit shall be paid. Any other terms required to implement the merger credit shall be included in the merger credit tariff for approval by the Commission.

In its merger credit commitment, ScottishPower notes that the amount of the credit offered in Idaho is calculated based on the same percentage of tariff revenues as used in other state jurisdictions where a merger credit is being offered. Idaho customers are therefore receiving the same relative benefit as has been offered in other states consistent with the most favored nation provision.

The proposed merger credit supercedes the Joint Applicants' previous commitment to reflect in PacifiCorp's cost of service, commencing in year three following the closing of the merger, Idaho's allocated share of $10 million in corporate cost savings, or approximately $450,000 per year. The merger credit commitment, ScottishPower contends, gives Idaho customers an immediate, guaranteed rate benefit of $6.4 million over four years compared to the

previous commitment under which customers would receive rate benefits only in future rate cases after the third year.

3. Commission Staff

Staff believes that the cost of and rates for PacifiCorp's service will not increase due to the merger itself. This is because the costs incurred to transact the merger through closing will be booked "below the line" and customers will not pay these costs. Tr. p. 875. Attached to Carlock's testimony as Exhibit No. 101 are production request responses from ScottishPower assuring that merger costs and penalties paid if standards are not met will be recorded below the line and not paid by customers. Tr. p. 875.

Operating efficiencies resulting from improvements implemented by ScottishPower will be reflected in the Company's actual costs. ScottishPower originally guaranteed operating efficiencies of at least $10 million annually on a system basis. If the minimum $10 million annual reduction is not achieved by the end of the third year, an amount equal to the difference between the $10 million and efficiencies actually achieved must be moved below the line to be absorbed by shareholders. Tr. pp. 875-876.[21]

Annual report of efficiencies achieved must be provided to the Commission Staff to verify the savings along with an annual commission basis earnings report. ScottishPower has committed to provide these reports in a format similar to that currently used by the Company in the UK. The actual report format can be modified for additional information following the merger if the Commission so desires. Tr. p. 876.

Moreover, Staff will audit the annual commission basis earnings report and file an audit report with the Commission. The results of this report can be used to determine if the efficiencies have been achieved. If not, the procedure and actual adjusting entries can then be determined. Staff believes that this guarantee and annual review process provide assurance that rates will not increase as a result of the merger. Tr. p. 876.

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[21] This cost savings guarantee was eventually superseded by the merger rate credit proposed by the Company. (Merger Approval Condition No. 3)

Staff is convinced that ScottishPower can achieve the efficiencies it has targeted based upon Staff's review of the Company's due diligence reports, disclosure letters, board meeting minutes, annual reports and statements of regulatory accounts, shareholder circulars, proxy statements and the production request responses in this case which reflect areas where efficiencies may be achieved. Staff believes that cost reductions or elimination of duplicate functions should occur in the areas of investor relations, shareholder services, corporate finance, corporate communications, legal services, corporate strategy, human resources and information technology. Tr. p. 878.

4. Solutia

Solutia, which operates an elemental phosphorous plant near the city of Soda Springs and is a special contract customer of PacifiCorp, presented the testimony of Richard Anderson. Anderson testified that "the Applicants' filing fails to show that PacifiCorp ratepayers will garner economic benefits resulting from proposed actions of ScottishPower." Tr. p. 682. He concludes that the merger violates the criteria of *Idaho Code* § 61-328 because it "may have an adverse effect on the economic well-being of ratepayers by increasing economic risk of ratepayers without providing concomitant benefits of equal value." Tr. p. 682.

Anderson contends that the estimated $10 million in cost savings that ScottishPower expects to achieve in reductions and corporate overhead is insignificant considering the size of the two companies. Tr. p. 687. He further questions the accuracy of the estimated $60 million in performance improvement benefits that ScottishPower expects to achieve. Tr. p. 688. Anderson disputes that ScottishPower will be able to implement the cost reductions at PacifiCorp that it achieved at ManWeb because the two utilities are significantly different. Anderson characterizes the potential for cost savings at PacifiCorp as "highly uncertain." Tr. p. 696.

Anderson concludes that, if the Commission were to approve the merger, it should insist on the following conditions:

1. ScottishPower should be willing to back up its claim of cost savings through a commitment to price stability or price reduction over the course of five years.

2. ScottishPower should be required to insulate the acquired companies from the parent corporation.

3. ScottishPower should be required to separate financing to ensure that investments are properly made for each of the acquired companies.

4. ScottishPower should be required to establish "arms length transactions" criteria between the group companies ("also known as "ring fencing").

5. ScottishPower should be required to meet strict conditions before distributing dividends from PacifiCorp.

Tr. pp. 725-726.

5. Irrigators

The Irrigators' witness Yankel argues that Idaho law requires that in order to gain approval for the merger, "the Commission must make a positive finding that the Applicants have demonstrated that the transaction/merger will not lead to increased costs or rates." He further states that "although the Idaho standard does not require a rate reduction, the second standard calls for a positive finding that rates will not increase—both now and in the future as a result of the merger." Tr. p. 772. Yankel concludes that the Applicants "have not provided any evidence that rates will not go up in the future as a result of the merger." Tr. p. 772.

Yankel spends a considerable amount of his testimony discussing his perception that the rates of eastern Idaho's investor-owned electric utility electric customers are significantly higher than rates paid by similar customers located elsewhere in the state of Idaho. Tr. pp. 775-778. Yankel also contends that PacifiCorp's Idaho customers pay higher rates than their PacifiCorp counterparts in Utah. Yankel argues that ScottishPower has made no commitment "that rates will not go up because of the expenses and investments that are being proposed by the Applicants as a part of this merger." Tr. p. 789.

Yankel alleges that ScottishPower will seek to recover the bid premium it will pay to PacifiCorp as a result of the merger from ratepayers if it cannot be offset by cost savings. Yankel argues that the motivation for the merger is simply financial and that "ScottishPower hopes to extract hundreds of millions of dollars per year out of PacifiCorp" without adjusting rates downward. Tr. p. 793. According to Yankel, ScottishPower will first make considerable capital investment following the merger in order to achieve cost savings. This, he contends, will cause rates to increase. Tr. pp. 795-797.

We find:

It appears that, to some extent, the Irrigators and Solutia are operating under the misconception that Idaho law requires that PacifiCorp's rates must decrease as a condition of merger approval. As we stated earlier, this is an inaccurate interpretation of the clear letter of the law. PacifiCorp simply has the burden to establish that rates will not increase because of the merger. We find that: (1) even absent the commitment by the Joint Applicants, rates will not increase because of the merger, (Merger Approval Condition No. 1), and; (2) absent the proposed rate credit (Merger Approval Condition No. 3), the standard in *Idaho Code* § 61-328 pertaining to rates has been satisfied. ScottishPower and PacifiCorp enumerated a variety of means by which the Companies intend to reduce costs and, therefore, rates. This was corroborated by the Commission Staff. While a general fear of rate increases was expressed, there was no verifiable, quantifiable evidence presented that rates would go up due to the merger. Solutia and the Irrigators questioned the magnitude and timing of the estimated cost savings. This does not constitute a showing that rates will increase. We find that the Joint Applicants met their initial burden of proof and were never successfully refuted.

Regardless, any doubt that might arguably have existed regarding this issue was definitively put to rest by the filing of the Joint Applicants' Notice of Merger Credit Commitment. As a final and irrefutable measure to ensure that rates will not increase as a result of the merger, we hereby impose the additional condition (Merger Approval Condition No. 2) that following the merger, PacifiCorp shall not seek a general rate increase effective prior to January 1, 2002. This literally guarantees that PacifiCorp's customers will see an immediate rate reduction lasting <u>at least</u> 2 years through the combination of the merger rate credit and the moratorium on general rate increases imposed herein.[22] This rate reduction would not have occurred absent the merger.

There are other aspects of this issue, however, that warrant discussion. Legitimate concerns were expressed by Solutia, and others, regarding the need for ensuring that rates do not increase because of the merger, that PacifiCorp's customers not be required to pay for the merger

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[22] The rate credit will be applied for four years. Our Order imposes the additional condition of a rate moratorium for approximately two years. PacifiCorp is entitled to seek a rate increase to be effective in year three if it can prove that its revenue requirement is deficient.

transaction costs and that PacifiCorp essentially be insulated from the activities of ScottishPower's other subsidiaries. In addition to all of the commitments made by ScottishPower regarding the reporting of cost savings and the continued use of existing allocations, ScottishPower has agreed to provide this Commission access to the books and records of all its affiliates to the extent necessary to review any transactions between PacifiCorp and its affiliated interests. (Merger Approval Conditions Nos. 26 and 33). Furthermore, in Merger Approval Condition No. 24, ScottishPower agrees that none of the merger transaction costs will be allocated to PacifiCorp's accounts. This condition, combined with our audit authority pursuant to Title 61 of the Idaho Code, will ensure that PacifiCorp's customers will not pay for the costs of the merger. Thus, we find that the majority of the merger approval conditions proposed by Solutia witness Anderson are imposed by this Order.

Finally, we find that the concerns expressed by members of the public and discussed extensively by the Irrigators' witness Yankel regarding the perceived rate disparity between PacifiCorp's Idaho irrigation customers and those in other states fall outside the scope of this proceeding. It is well-settled that this Commission sets rates for electric utilities that allow the utility to recover its reasonable operating expenses as well as a reasonable return on its rate base within the state. Because the operating expenses and rate base of PacifiCorp differ from those of other utilities, including Idaho Power, its rates also differ. *See, The Attorney General's Report on Electric Utilities Restructuring (January 11, 1999) at pp. 16-19.*

Regardless, we find the generally held perception that PacifiCorp irrigation customers pay considerably higher rates than customers on other systems is not corroborated by the record in this case. For example, in his direct testimony, Irrigator witness Yankel presented calculations which he contended show that a hypothetical 200 horsepower PacifiCorp irrigation customer pays 26-89% higher rates in the Company's Idaho territory than in Utah. Tr. p. 776. On cross-examination, however, PacifiCorp introduced Exhibit No. 229 for the same hypothetical irrigation customer showing that in Idaho, that irrigator pays 8.3% less than his Utah counterpart, when comparable rate schedules are used and BPA rate credits are taken into consideration. The discrepancy is explained by the fact that Yankel's calculations were based on rate schedules, not bills, and did not take into account how many customers take service under the various PacifiCorp irrigator rate options nor did he take into account the BPA credit not available in Utah. Tr. pp. 821-827.

We further find the suggestion that a purchase of PacifiCorp's system by the Idaho Power Company would lower the rates of PacifiCorp's Idaho customers is incorrect. Idaho law prohibits the approval of a purchase that would increase the rates of the purchaser's customers. Regardless, nothing in *Idaho Code* § 61-328, or any other statute, would allow this Commission to impose a condition that Idaho Power purchase the Idaho service territory of PacifiCorp. The Commission does not broker merger deals. It merely reviews them once utilities agree to merger terms and file a case before us. For the Commission to do otherwise would be meddlesome and outside of its jurisdiction. The Idaho Supreme Court has ruled that this Commission has no jurisdiction to take away a utility's freedom of contract so long as the contract is not inimical to the public interest. *Afton Energy, supra.*

F. Public Interest

The term "public interest" as it appears in *Idaho Code* § 61-328, is not specifically defined anywhere in that statute nor anywhere in Title 61 of the Idaho Code. Moreover, we find no definitive definition of the term in any Idaho Supreme Court opinion interpreting § 61-328. The Idaho Supreme Court has ruled that the term "public interest" (as used in relation to a motor carrier statute) "is not susceptible of precise definition." *Browning Freight Lines, Inc. v. Wood*, 99 Idaho 174, 180, 579 P.2d 120, 126 (1978). The Court ruled that "[i]n general, where the Commission is required to consider the 'public interest,' it must look to 'the interest of the public, their needs and necessities and location and, in fact, all the surrounding facts and circumstances...to the end that the people be adequately served." *Id.* p. 180 *(citing Application of Bermensolo*, 82 Idaho 254, 352 P.2d 240 (1960). The Idaho Supreme Court has also found that state administrative agencies are "clothed with power" to construe the law "as a necessary precedent to administrative action." *J.R. Simplot Co. v. Idaho State Tax Commission,* 820 P.2d 12061211, 120 Idaho 849,854 (1991). Consequently, we are left to interpret this term.

Because § 61-328 applies to a wide variety of situations in which an electric utility divests itself of ownership interest in its facilities, we find that, as the Supreme Court noted, a precise definition of the term "public interest" is not possible. In fact, the term should necessarily be left somewhat undefined to allow for the accommodation of different factual circumstances. In this case, there was a wide range of issues raised and concerns expressed that pertain to the "public interest" standard. We considered them all in reaching our decision. In

this section of the Order, we discuss the public interest as it will be affected by the merger and, in doing so, divide the term into categories below.

Throughout these proceedings, a great deal of attention has been given to the weight that should be placed on public testimony. Specifically, the debate has focused on how public testimony should be factored into the Commission's decision related to the statutory test of what is adverse to the public interest. While the Joint Applicants and some of the parties to this case are clearly at opposite ends of the spectrum on this issue, it is ultimately left to the Commission to make this determination. Understanding how the Commission perceives the "public interest" is the appropriate place to begin.

It is this Commission's opinion that public opposition is not necessarily equal to the public interest. To illustrate this point, one need only look at the sentiment and tenor of the public testimony that is presented when the Commission undertakes a general rate case. Public hearings in rate cases seldom bring out individuals who support a rate increase. Instead, the opposite occurs. Ratepayers almost unanimously testify against a proposed increase of any amount. For this Commission to decide the issues in this or any other case based only on popular opinion would be a gross abrogation of our powers and duties prescribed in Title 61, Chapter 5 of the Idaho Code and would render our functions as a Commission meaningless. In assessing the public interest, we must also consider the legal rights of the Joint Applicants, to have their Application considered by this Commission in good faith, with objectivity and free from emotional rhetoric. With this said, it is important to note that all Commission decisions must be "in the public interest." As a result, it becomes clear in instances of rate cases that the public interest may not be equal to public sentiment. This does not mean that testimony obtained during the public hearing process should be disregarded. To the contrary, the Commission believes that the public testimony in this case was extremely valuable as referenced throughout this document and can be credited with helping the Commission craft an Order that promises considerable benefits and opportunities for PacifiCorp's Idaho customers.

1. Service Quality

a. Public Comment

One of the most common bases for opposition to the merger relates to the quality of service received by PacifiCorp customers. In this regard, numerous customers expressed dissatisfaction over the reliability of the power supply and customer service they currently and

historically have received from PacifiCorp. Many testified that following the merger of UP&L into PacifiCorp, service quality in southeastern Idaho diminished. For example, service calls that were historically placed to UP&L offices in Idaho were eventually routed to Salt Lake City, Utah or Portland, Oregon to a PacifiCorp representative who often lacked the ability to pinpoint the customer's location and understand, let alone remedy, his or her service problem. These complaints were expressed most often by farmers who typically take delivery of electric service at numerous points, in rural areas without addresses, and whose needs and concerns can be unique. Many of those who testified at the public hearings believe that a similar degradation in service quality will occur if PacifiCorp is allowed to merge with ScottishPower.

Some customers complained about the number and duration of power outages they experience. Perhaps most of the complaints dealt with the lack of PacifiCorp presence in southeastern Idaho and the difficulty customers experience in achieving satisfactory solutions to their service and billing problems. There was mention of long wait times by customers who call into PacifiCorp's Business Centers.

b. Joint Applicants

One of the primary benefits of the merger according to the Joint Applicants relates to the improvements that will be made to PacifiCorp's levels of performance and customer service. PacifiCorp executive O'Brien characterized the package of commitments and standards proposed by ScottishPower as "the most comprehensive offered by any investor-owned U.S. utility." Tr. p. 252. O'Brien contends that absent ScottishPower's involvement, PacifiCorp "simply could not commit to achieving improvements this substantial or this broad on this short a time schedule nor could it do it as economically." *Id.* ScottishPower executive Richardson testified that the improvements in customer service will be achieved through the introduction of an "unprecedented package of service standards." Tr. p. 63.

ScottishPower witness Moir provided greater detail regarding the improvements that will be made to PacifiCorp's operations. First, ScottishPower offers the following performance standards:

1. System Availability. By 2005, PacifiCorp will undertake to reduce the underlying system-average interruption duration index (SAIDI) by 10%.

2. System Reliability. By 2005, PacifiCorp will undertake to reduce the underlying system-average interruption frequency index (SAIFI) by 10%.

3. Momentary Interruptions. By 2005, PacifiCorp will undertake to reduce the underlying momentary average interruption frequency index (MAIFI) by 5%.

4. Worst Performing Circuits. The five worst performing circuits in each state will be selected annually on the basis of the circuit performance indicator (CPI) and corrective measures will be taken within two years of implementation of the performance targets to reduce the CPI by 20%.

5. Supply Restoration. For power outages because of a fault or damage on PacifiCorp's system, the Company will restore supplies on average to 80% of customers within three hours.

6. Telephone Service Levels. Within 120 days after completion of the transaction, 80% of calls to PacifiCorp's business centers will be answered within 30 seconds. The long-term goal will be to move to a service level of 80% within 10 seconds.

7. Commission Complaint Resolution. PacifiCorp will investigate and provide a response to all complaints referred by the Commission within three working days. Complaints related to service disconnection will be responded to within four business hours. Ninety percent of complaints referred to PacifiCorp by the Commission will be resolved within 30 days. These standards will be implemented within 90 days of completing the transaction. Tr. p. 380.

ScottishPower offers the following customer guarantees:

1. Restoring the Customer Supply. If the customer loses electricity supply because of a fault in PacifiCorp's system, the Company will attempt to restore the customer's supply within 24 hours.

2. Appointments. PacifiCorp will honor all mutually agreed appointments with the customer, whether over the phone or in writing. Beginning in the year 2001, the Company will offer the customer a morning appointment, between 8:00 a.m. and 1:00 p.m. or an afternoon appointment, between 12:00 noon and 5:00 p.m.

3. Switching on the Customer's Power. Upon customer request, PacifiCorp will activate the power supply within 24 hours provided

that no construction is required and that all government requirements are met.

4. Estimates for Providing a New Supply. PacifiCorp will call the customer back within two business days of the customer's initial call and schedule a mutually agreed appointment with an estimator. If changes to the Company's network are necessary, PacifiCorp will provide a written estimate to the customer within 15 business days of the customer's initial meeting with the estimator. If no changes are necessary, PacifiCorp will provide an estimate within five business days of the initial meeting.

5. Response to Bill Inquiry. If the customer has a question regarding their electric bill, PacifiCorp will investigate and respond to the customer's inquiry within 15 business days.

6. Problems with the Customer's Meter. If the customer suspects there is a problem with their meter, PacifiCorp will investigate and report back to the customer within 15 business days.

7. Planned Interruptions. If it is necessary for PacifiCorp to turn the customers' power supply off for planned maintenance work or testing, the Company will provide the customer at least two days' notice.

8. Power Quality Complaints. Whenever a customer notifies PacifiCorp regarding a problem with the quality of electric supply, the Company will either initiate an investigation within seven days or explain the problem in writing within five business days.

Moir testified that if the Company fails to meet the foregoing customer guarantees, then ScottishPower will make payments to the affected customers as set forth in Exhibit 208 offered by the Company. Tr. p. 382. Exhibit No. 208 clarifies the performance standards and customer guarantees offered by ScottishPower and PacifiCorp. It explains that extreme events will be excluded from reliability indices, circuit performance indices, and supply restoration times. In addition, it outlines the circumstances under which customer guarantees will not apply. Moir believes that the performance standards listed earlier are designed to reduce the frequency and duration of outages to PacifiCorp's retail customers. These standards are designed to be achieved within the five-year time period following the transaction, or by 2005. Tr. p. 382.

Thus, PacifiCorp commits to reducing SAIDI and SAIFI by 10% and MAIFI by 5% from an accurate base line for PacifiCorp's system. These reductions will be achieved by 2005

or five years following the completion of the merger transaction. The SAIDI, SAIFI and MAIFI indices will be calculated separately for each state jurisdiction providing comparable improvements in reliability for all states. Tr. p. 383. ScottishPower recognizes that base line data established may change from PacifiCorp's current historical outage data because of uncertainty regarding the accuracy of the historical performance of PacifiCorp to date. ScottishPower commits to implement new monitoring and reporting information systems for the PacifiCorp system that will improve the accuracy of outage data. Tr. p. 383.

ScottishPower has committed to annually improve the five worst performing circuits on the Company's system by 20% which, Moir contends, will address the immediate problems experienced by those groups of customers that suffer the poorest quality of supply. Tr. p. 384. Moir concludes that the aforementioned improvements to PacifiCorp's performance levels will significantly benefit customers who value reliability and service quality and for whom outages can result in considerable economic loss, threat to personal safety and well-being and inconvenience. Tr. p. 385.

As a show of faith for its commitment, PacifiCorp has proposed financial penalties to be paid by the Company in the event that it does not achieve the five performance standards relating to the Company's network (SAIDI, SAIFI, MAIFI, five worst performing circuits and restoration of power) within the five-year period following approval of the merger transaction. For each of the standards not achieved in any jurisdiction at the end of the five-year period, ScottishPower will pay a financial penalty equal to $1 for every customer in such jurisdiction. In the event that ScottishPower fails to meet its performance standards relating to the network in all jurisdictions, this would equate to a total penalty of $7 million. Tr. pp. 385-386.

Regarding response time to customer telephone calls, ScottishPower proposes that within 120 days after completion of the merger, 80% of the calls to PacifiCorp's business centers will be answered within 30 seconds. This target will be increased to 80% in 20 seconds by January 1, 2001 and 80% in 10 seconds by January 1, 2002. ScottishPower notes that PacifiCorp's current average speed of answer in the business centers is over 3 minutes and, therefore, the standards proposed constitute a significant improvement. By reducing the average speed of answer and implementing best practices from ScottishPower's call center operations, PacifiCorp will be able to make it easier for customers to reach the right person to answer their questions according to Moir. Tr. p. 387.

ScottishPower notes that, currently, it takes an average of five business days for PacifiCorp to investigate and respond to non-disconnect complaints filed by customers with state regulatory commissions. ScottishPower proposes to reduce this to an average of three business days within 90 days of completion of the merger. Tr. p. 387. ScottishPower also proposes to reduce the length of time necessary to investigate and respond to disconnect complaints. The Company commits to reducing this by 50% from the current average of eight business hours to an average of four within 90 days of completion of the merger. Currently, PacifiCorp closes 86% of all complaints within 30 days. ScottishPower proposes to increase this percentage to 90% within 30 days of completion of the merger and to 95% by 2001. Tr. pp. 387-388. Moir believes that customers will benefit by having their complaints responded to and resolved in a more expeditious manner helping to reduce customer confusion, uncertainty and anxiety. Tr. p. 388.

Regarding the proposed customer guarantees, Moir contends that PacifiCorp customers will have better, quicker and more reliable interaction with the Company. Responding quickly to complaints about power quality or billing inquiries reduces customer frustration and leads to improved customer/company relations. The efficient resolution of meter problems produces significant benefits by reducing customer debt exposure. Providing sufficient notice to customers when their service must be shut off for maintenance or testing shows consideration on the part of the Company. Tr. p. 389.

Associated with each of ScottishPower's proposed customer guarantees is a time period within which PacifiCorp will respond. Failure to do so will result in a payment of $50 to a residential customer and $100 to an industrial or commercial customer. Tr. p. 389. PacifiCorp intends to track changes in customer service internally on a quarterly basis so that improvements or problems can be identified quickly. Tr. pp. 391-392.

ScottishPower intends to achieve its planned improvements through direct capital investments, training, and changing PacifiCorp's corporate philosophy to emphasize customer satisfaction as the Company's top priority. Tr. p. 392. ScottishPower will spend approximately $55 million during the five-year implementation period to implement the proposed service standards package. *Id.* These expenditures are in addition to the funding for which PacifiCorp had already planned without the transaction. Of this $55 million, approximately $30 million will be capital investment for new infrastructure. The remaining $25 million will cover the costs of

additional maintenance, payments for customer guarantee failures, employees and training. *Id.* These investments and related process changes will allow PacifiCorp to more accurately measure system performance and instigate directed improvements in electric service and customer interaction. *Id.*

ScottishPower has already developed a fault reporting and customer monitoring system called "Prosper" that it intends to implement at PacifiCorp. Prosper acts as a data base for network information that will allow PacifiCorp to more accurately measure circuit performance and target investment at the worst performing circuits. This program cost ScottishPower $2 million to develop and implement in the UK. Following the merger, PacifiCorp will gain access to this proprietary technology at a marginal cost. Tr. p. 393. Moreover, ScottishPower will train employees in how to satisfy customers. *Id.*

ScottishPower has committed to provide information to both customers and the Commission on whether ScottishPower has achieved its objectives regarding system performance and customer service. The Company will provide annual reports to both customers and the Commission. First, ScottishPower will issue a report to the customer by June 30 of each year regarding its record in improving performance standards and how well it has performed against its customer guarantees. Each report will contain an overview of ScottishPower's standards, targets and guarantees and describe the performance results for that year. Tr. p. 397.

ScottishPower will also provide an annual report to the Commission by May 31 of each year offering a reporting plan that will discuss implementation of ScottishPower's programs and procedures for providing improved performance. The report will provide a general summary of how PacifiCorp performed according to the standards, targets and guarantees. The report will:

1. provide performance reports for each standard, target or guarantee;

2. identify excluded exceptions;

3. explain any historical and anticipated trends and events that affected or will affect the measure in the future;

4. describe any technological advancements in data collection that will significantly change any performance indicator;

5. discuss any phase-in of new standards, targets or guarantees;

6. include the name and telephone numbers of contacts at PacifiCorp to whom inquiries should be addressed.

Tr. p. 398.

Moreover, if the Company is not meeting a standard, target or guarantee, the report will:

1. provide an analysis of relevant patterns and trends;

2. describe the cause or causes of the unacceptable performance;

3. describe the corrective measures undertaken by the Company;

4. set a target date for completion of the corrective measures, and;

5. provide details of any penalty payments due.

Tr. pp. 388-399.

In addition, ScottishPower recently submitted the processes it uses for customer service standards for International Standards Organization (ISO) 9002 accreditation. ISO accreditation requires internal and external audits across all businesses and Company standards. Likewise, ScottishPower will seek ISO 9002 or ANSI accreditation for PacifiCorp's program to offer customer guarantees.

c. Commission Staff

Staff witness Sterling believes that the network performance standards proposed by ScottishPower "offer a means of ensuring the service will not deteriorate as a result of the merger." Tr. p. 938. The goal of efficient, low-cost utility service cannot be achieved by sacrificing reliability and customer service, Sterling contends. Performance standards offer a means of protecting customers by holding utilities to measurable levels of performance. Tr. p. 938.

According to Sterling, the purpose of the network performance standards proposed by ScottishPower is to help ensure that the frequency and duration of both long-term and short-term outages experienced by PacifiCorp customers is minimized. Tr. p. 939. Sterling notes that while the Idaho Commission requires electric utilities to provide "reliable service" there are no specific reliability criteria that electric utilities operating in Idaho are required to meet. The Idaho Code is not specific with regard to reliability. He notes that although most utilities collect data related

to the reliability of their systems, there exists no common basis for assessing or reporting system reliability for utilities operating in Idaho. Tr. pp. 941-942. Currently, PacifiCorp does have reliability "targets" that it tries to meet in Idaho even though there are no specific requirements of the Commission. It is impossible, however, to compare the reliability of PacifiCorp's Idaho system to other states, Sterling contends, because of differences in how outage data are collected and reported. Tr. p. 947.

Sterling believes that the Company's five-year planning horizon for improving its performance standards (SAIDI, SAIFI, MAIFI and five worst performing circuits) is reasonable given the lack of accurate historical data regarding the PacifiCorp system and the need to establish a new base line. Tr. p. 948. Sterling believes that establishing a new base line is valuable to the Company's Idaho customers because it will provide a fair yard stick with which to measure future performance; something that did not exist prior to the merger. Tr. p. 949.

Because SAIDI, SAIFI, MAIFI are averages based on the entire PacifiCorp system in Idaho, the use of system averages can hide problems experienced by individual circuits. In recognition, of this fact, ScottishPower has proposed to calculate a circuit performance indicator (CPI) for each circuit. This will permit a mathematical comparison and allow ranking between distribution circuits to enable the Company to pinpoint problem areas within its Idaho service territory. Tr. pp. 950-951.

ScottishPower has proposed a penalty of $1 per customer for each reliability standard it fails to meet. In Idaho, this means a penalty of $53,000 for each measure not met or a combined total of $265,000 if none of the five reliability measures are met. Sterling believes that, by itself, the amount of the penalty is not significant when compared to the Company's annual revenues but is significant compared to penalties historically assessed by the Commission against utilities in Idaho. He concludes that if the Company were actually required to pay a penalty this large, it would certainly draw the attention of customers and shareholders alike and would reflect poorly on the Company. Consequently, Sterling believes that the amount of the proposed penalty does provide sufficient incentive to meet reliability standards. Tr. pp. 953-954.

Sterling believes that the penalties proposed by ScottishPower are sufficient if reliability targets are not achieved but, in addition, originally proposed that the Company should be subject to additional penalties if reliability drops below base line levels. He proposed that those additional penalties be computed using the same methodology used by ScottishPower in

estimating the benefits of reducing SAIDI and MAIFI. Tr. p. 954. During cross-examination, however, Sterling acknowledged that ScottishPower's proposal to establish a performance review process satisfied Sterling's concerns regarding reliability and was an acceptable alternative to his proposed penalties. Sterling believes that any penalties paid by ScottishPower should not be placed in the PacifiCorp foundation but, rather, recommends that the Commission withhold judgment on how such funds should be distributed until any penalties are assessed. Tr. p. 955.

Exhibit 226 contains ScottishPower's performance review process proposal.[23] This process provides for a fast regulatory response in the unlikely event that reliability declines to unacceptable levels, assures that problems are quickly remedied and provides a mechanism for determining cost responsibility for remediation measures. As proposed by ScottishPower, a performance review committee would be created to establish baselines for system performance, to evaluate declines or improvements in performance, and to agree on remediation measures when needed.

Sterling believes that the $55 million capital investment ScottishPower intends to make in order to improve performance is reasonable so long as no additional funds over and above those planned to come from existing PacifiCorp budgets are needed. The proposed expenditures could only affect customers' rates if PacifiCorp sought and received approval in a future rate case from this Commission to recover the investments through rate increases. Sterling concludes that if the funds needed to achieve the proposed improvements cannot ultimately be obtained through savings, efficiencies, and redirection of existing budgeted funds, then the Commission should give careful scrutiny to any Company request to recover these investments through higher rates. Tr. p. 957.

Whether the reliability improvements ScottishPower hopes to achieve are worth $60 million or not is not critical to Sterling's opinion. What he considers important is that the improvements have a value to Idaho customers at least equal to the amount invested to achieve them and that they are not achieved at the expense of deficiencies in other areas. Tr. p. 958. He notes that whether the Commission approves the merger or not, it still has the authority to set standards for acceptable service and to review the prudence of Company investments. The

Commission has as much ability to demand quality of service and ability to review prudence after the merger as it does now. Tr. pp. 958-959.

Staff proposes that it be involved in the establishment of reliability base lines used to judge the Company's future performance and that those base lines be ultimately subject to Commission approval. Tr. p. 960. Sterling believes that the reporting process performance proposed by ScottishPower is reasonable. He proposes, however, that annual meetings be planned between the Company and the Commission Staff to review the Company's progress during the previous year, to review the suitability of the performance measures selected and the methods used to calculate and measure them, to review the ability of the Company to collect and report data, to analyze the development of accurate base lines and the integration of old performance data with new data and to analyze whether the data fairly and accurately represent the performance of the electric network. Tr. pp. 961-962.

Staff witness Beverly Barker testified that with regard to performance standards, there are two offered; one relates to the average speed of answering calls to PacifiCorp's business centers and the other to the amount of time to respond to and resolve complaints referred by the Commission. Barker notes that the standards proposed by ScottishPower would "represent a significant improvement over PacifiCorp's past performance." Tr. p. 989.

She also notes that the Commission's Consumer Assistance Division has not been satisfied with PacifiCorp's historical responsiveness to Commission referred complaints. It took an average of 16 calendar days to resolve Utah Power complaints in 1998. This compares to an average of six days for U S WEST and four days for Idaho Power; both of which had significantly more complaints than Utah Power. Thus, if PacifiCorp were to meet the target proposed by ScottishPower, it would represent a "significant improvement in performance." Tr. p. 990.

ScottishPower has proposed several exceptions to its commitment to restore power within 24 hours including: outages resulting from wide spread damage to the transmission or distribution system; strikes, safety concerns; customer agreements to remain without power; or problems existing with the customer's facility. Barker recommends a shorter maximum time frame for the restoration of service since the circumstances most likely to cause lengthy delays

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[23] Merger Approval Condition No. 6.

are excluded from the guarantee. Tr. p. 997. Barker recommends that the Commission explicitly state its expectation that in the event of a Company caused outage, PacifiCorp will restore service as soon as possible.

Barker concludes that the customer service standards and guarantees proposed by ScottishPower are an important first step. They will establish a base line for measuring performance and improving service to PacifiCorp customers over time. Tr. pp. 1007-1008.

We find:

We find that, at least with respect to PacifiCorp's Idaho customers, the merger will usher in a new era of electric utility service that is more customer-oriented. There is a widely held perception that following the merger of Utah Power & Light into PacifiCorp, customer service in southeastern Idaho began deteriorating. The evidence presented in this case convinces us that the opposite result will occur as a result of this merger. The number and degree of commitments proposed by ScottishPower, which we adopt herein, to improve service quality are extensive. In summary, ScottishPower commits to: (1) reduce system interruptions; (2) address the system's five worst performing circuits; (3) restore supply faster in the event of outages; (4) reduce customer wait times on calls to PacifiCorp's service centers; (5) reduce the turnaround time on service and billing inquiries; (6) expand the time that Company personnel are available to respond to customer inquiries; (7) establish system performance baselines to aid in future assessment of performance; (8) establish and improve Company reporting of performance, including failures to achieve targeted standards, and; (9) impose penalties in the event the Company fails to achieve certain standards.

ScottishPower's proposal to subject itself to penalties in the event it fails to achieve these standards is further evidence that the proposed improvements to service quality are not illusory. ScottishPower proposes to "raise the bar" in terms of measuring and monitoring service quality and reporting to this Commission. Thus, we view this merger as a valuable opportunity to achieve considerable improvements in the areas of system performance and customer service that might not have occurred as efficiently or quickly without the financial strength and experience of ScottishPower.

We find it significant that although the Irrigators and Solutia questioned the value of the proposed performance and customer service improvements, and whether they could be achieved, there was simply no evidence presented that, with respect to service quality, the public

interest would be adversely affected by the merger. Again, that is the standard to which we are bound. The overwhelming weight of evidence presented in this case convinces us that service quality will not decline as a result of the merger.

We defer judgment on the distribution of any service quality penalties until if and when they are imposed.

2. BPA credits

Mr. O'Meara and Ms. Hansen presented their testimony on behalf of the Public Power Council together as a panel. The subject of their testimony was PacifiCorp's continued eligibility for residential exchange benefits from BPA. They express concern whether that eligibility would continue following the merger under the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). While they did not go so far as to state that PacifiCorp would be ineligible for residential exchange credits following the merger, O'Meara and Hansen stated that it "remains unclear." Tr. p. 650. Pursuant to the Northwest Power Act, only Pacific Northwest electric utilities have filed for and received residential exchange benefits from BPA. Those utilities have always directly served residential and small farm consumers to whom the exchange benefits are directed. They acknowledge that PacifiCorp has qualified in the past for exchange benefits for both its Idaho service territory and in other states. Tr. p. 651. They contend that, following the merger, the decision whether PacifiCorp would continue to qualify as a Pacific Northwest utility would rest with BPA, FERC and, if challenged, ultimately the federal courts. Tr. pp. 651-652. O'Meara and Hansen also contend that the merger may have the effect of changing PacifiCorp's average system cost, which would affect the amount of residential exchange benefits to which it is entitled. Tr. pp. 652-656.

In rebuttal, PacifiCorp witness Brattebo challenged the assertion that the merger will have any effect on PacifiCorp's eligibility for BPA credits. Brattebo testified that BPA's Residential Exchange Program will continue after 2001. Tr. p. 348. Given the continuing dispute with investor-owned utilities over BPA's reduction of exchange benefits, however, BPA also intends to offer "subscription" power to those utilities to serve a portion of their residential and small farm loads. This subscription power would be offered as a means of settling the investor-owned utilities' rights under the Residential Exchange Program for five to twenty years; the "Subscription Settlement." Tr. p. 348-349.

According to Brattebo, PacifiCorp will continue to participate in the Residential Exchange Program or the Subscription Settlement if the merger is approved. Tr. p. 348. Brattebo testified that the merger will not affect PacifiCorp's status as a "northwest utility" nor its eligibility for benefits under the Residential Exchange Program. Tr. p. 349. Brattebo notes that the relevant consideration for BPA in determining whether a utility is eligible for participation in the exchange program is whether it provides state-regulated retail service to residential and small farm customers within the Pacific Northwest. Tr. p. 350. For example, BPA recognized Pacific Power & Light Company as an eligible utility even though it was a Maine corporation when the initial contracts were executed. *Id.* Moreover, Utah Power & Light was a Utah corporation located in that state but BPA considered it eligible because it served customers who were located within the PacifiCorp Northwest region. *Id.* Brattebo further contends that the merger will not change PacifiCorp's average system cost (ASC) nor the ASC methodology. Tr. p. 354. The amount of exchange benefits PacifiCorp's Idaho customers are entitled to has been settled through June 30, 2001 he notes.

Staff witness Sterling also weighed in on the BPA issue. Staff investigated whether the merger would affect PacifiCorp's eligibility for residential exchange credits from the BPA. Staff believes that the determination of PacifiCorp's continued eligibility is a legal one that rests outside the scope of the Commission's authority. Nonetheless, Staff notes that BPA has continued to negotiate residential exchange rights with PacifiCorp even knowing that the latter intends to merge with ScottishPower. Tr. p. 972.

We find:

We appreciate the importance of this issue and the input provided by the Public Power Council. Nonetheless, we find that there was simply no credible evidence presented that the merger will render PacifiCorp ineligible for continued participation in the BPA exchange program. To the contrary, the BPA itself confirmed that PacifiCorp will continue to remain eligible after the merger. Exhibit No. 2 introduced during the technical hearing is a letter from BPA regarding the exchange program, in response to an inquiry from PacifiCorp, in which BPA concluded that "the pending merger would not affect PacifiCorp's eligibility to participate in the Residential Exchange Program or PacifiCorp's ability to negotiate a settlement of its rights under that program." Tr. pp. 356-57.

In any event, we note that it is very unlikely that PacifiCorp will continue in the BPA residential exchange program after 2001 regardless of the merger. In cross-examination by Commissioner Smith, PacifiCorp witness Brattebo testified as follows:

> Q. Thank you. It's my understanding that the exchange credit program is to be kind of replaced by something we are calling subscription. Is that your understanding?
>
> A. That's the proposal the Bonneville administrator has made, yes.
>
> . . .
>
> Q. And so if in these discussions PacifiCorp, as Utah Power and Light's service territory, is able to walk away with a subscription amount that is equal to today's exchange, can we hold customers harmless from effects of whatever happens to the average system cost or the exchange program or the 7(b)(2) test?
>
> A. If we enter into an agreement to settle our exchange rights under a subscription process, the issue of 7(b)(2) goes away. As far as will the new program actually be equal to the current exchange benefits?
>
> . . .
>
> Q. How do you see that working? I guess my real question is do you see the Utah division of PacifiCorp receiving any exchange credits if the 7(b)(2) test is applied?
>
> A. It would be total speculation, but I would guess there would be some benefits. However, though, there is another mechanism in the regional account that's called "in lieu."
>
> Q. In lieu, yes.
>
> A. And Bonneville has indicated that it will use the in lieu provision to eliminate all benefits under the traditional exchange program.
>
> Q. So what do you think is the likelihood of continuing in the residential exchange program after 2001 regardless of whether there is a merger or not?
>
> A. I would say the likelihood is very low.

Tr. pp. 370-371.

3. Water Rights

This is an important issue that was emphasized in the public hearings by Senators Noh and Lee and Representative Linford and other members of the Idaho Legislature. There was concern expressed regarding the effect that the merger might have on the water rights currently held by PacifiCorp in Idaho and the effect that would have on the water rights of Idaho irrigators; primarily those operating in or near the Bear River system.

PacifiCorp presented the testimony of Mr. Carly Burton who is a consultant employed by the Company for, among other reasons, the purpose of addressing water rights issues in this proceeding. He was employed by PacifiCorp for twenty-five years as a manager of water supplies and water rights for Utah Power & Light's 23 hydro projects. He has extensive experience with the Bear River system and with PacifiCorp's water rights for its Idaho hydro facilities. PacifiCorp currently has five "run of the river" hydro facilities located on the Bear River downstream from Bear Lake. Tr. p. 490. Mr. Burton was also employed to prepare an operating plan for the Bear River system "in a manner consistent with its historical operation and within the constraints of irrigation water delivery, drought management, the Bear River Compact, the 1995 Bear Lake Settlement Agreement, flood control and other concerns." *Id.* As discussed below, this plan ultimately became the subject of a cooperative agreement between ScottishPower, PacifiCorp, and the states of Idaho, Wyoming and Utah. Burton notes that "[a]ll of the obligations of PacifiCorp to deliver water to Idaho irrigators are, if not perpetual, very long term." Tr. p. 491. Burton argues that the merger of PacifiCorp and ScottishPower could not cause a change in the relationship between PacifiCorp and junior appropriators of water on the Bear River system. Tr. p. 492. He concludes that the merger will not adversely affect Idaho irrigators' water rights. *Id.*

Staff witness Sterling also addressed the water rights issue and believes that the merger will have essentially no effect on the rights currently held by PacifiCorp and, therefore, the rights of other users in the state. Sterling investigated whether the merger would have any effect on the water rights held by PacifiCorp in Idaho (including their seniority relative to water rights held by others in the state) and the operation of the Company's hydro facilities located on the Bear River and the upper Snake River. Most of PacifiCorp's water rights are associated with their plants on the Bear River: Grace, Oneida, Cove, and Soda. The Company also has water

rights attendant to its hydro facilities on the upper Snake River including the Ashton and St. Anthony plants on the Henry's Fork of the Snake River. Tr. p. 965.

The Company holds a series of water rights on the Bear River that stem from licenses, permits or statutory claims. PacifiCorp also holds decreed water rights to divert water from the Bear River for storage and Bear Lake. The general nature of the decreed rights allows the Company to operate, manage and release water from storage for power generation, irrigation and other beneficial uses. At the time of the decree, irrigators on the Bear River agreed to subordinate their irrigation rights in exchange for contractual rights with PacifiCorp (and its predecessor companies) for Bear Lake storage water. Most of those contracts are perpetual or very long-term and can only be terminated by mutual agreement of the parties. In addition, most of those irrigators use PacifiCorp's water to supplement existing rights, some of which are senior to PacifiCorp's rights.

Staff believes that PacifiCorp's water rights constitute property located in Idaho used in the generation of electric power and, consequently, neither PacifiCorp nor ScottishPower can sell or transfer those water rights without approval from the Commission pursuant to *Idaho Code* § 61-328. Tr. p. 967. In addition, Staff notes that in 1985, the Idaho Legislature enacted *Idaho Code* § 61-502B, which requires that "the gain upon sale of a public utility's water right used for the generation of electricity shall accrue to the benefit of the ratepayers." Tr. p. 967. Finally, *Idaho Code* § 61-539 specifically precludes the authority of the Commission in instances where the failure or refusal of an electric company to protect its hydro power water rights from loss or depletion to certain junior appropriative rights is involved. Tr. p. 967.

Based upon the foregoing, it is Staff's opinion that the water rights of PacifiCorp, or any other water right holder in Idaho, will not be adversely affected by the merger. Any statutory license, permit or claim related to the use of water would still be held by PacifiCorp or simply transferred to the succeeding entity with all of the same rights, conditions, limitations and responsibilities as prior to the merger. ScottishPower could only receive those rights that PacifiCorp holds and no more. Similarly, with decreed water rights, the sale, lease or transfer of a water right transfers no more legal interests in the water right than the original owner holds. In the case of contracts related to water rights, ScottishPower would be a successor in interest and the legal status of the contracts would not change because of the merger. Tr. p. 968.

We find:

Not only are PacifiCorp's hydro plants subject to sale or transfer approval pursuant to *Idaho Code* § 61-328, but so are the water rights associated with those facilities because they are used in the generation of electric power and are considered real property. Therefore, before PacifiCorp or ScottishPower can sell or transfer water rights or the control thereof, they must request approval from this Commission pursuant to *Idaho Code* § 61-328. In addition, in 1985 the Idaho Legislature enacted *Idaho Code* § 61-502B which requires "the gain upon sale of a public utility's water right used for the generation of electricity shall accrue to the benefit of the ratepayers."

Subsequent to the technical hearing, ScottishPower and PacifiCorp entered into two separate agreements pertaining to water rights associated with all of PacifiCorp's hydro facilities located in Idaho. The first such agreement, executed on October 5, 1999, pertains to the Company's Bear River/Bear Lake facilities and water rights. The parties to the agreement include ScottishPower, PacifiCorp, the State of Idaho (through the Department of Water Resources), the State of Utah (through the Division of Water Resources) and the State of Wyoming (through the State Engineer). The five page agreement, which we have reviewed and hereby take official notice of pursuant to Rule 263 of the Commission's Rules of Procedure (IDAPA 31.01.01.263), was executed in recognition of concerns expressed regarding PacifiCorp's water rights and the effect the proposed merger might have on them. Paragraph "B" of the "Recitals" section of the Agreement states:

> The Parties recognize the need to assure the public utility commissions of the states of Idaho, Utah, and Wyoming, and the other public officials and water users of the three States that PacifiCorp's merger with ScottishPower will not affect the operation of the Bear River System or PacifiCorp's ownership or exercise of its Bear River water rights.

The Parties further agree that:

a. PacifiCorp's water rights are constrained by the historic practice of not making a delivery call for hydropower generation; and

b. Bear Lake is operated, consistent with long-standing historic practice and applicable laws, primarily as a storage reservoir to satisfy contracts for existing irrigation uses and flood control needs in the three States, with the use of water for hydropower generation being incidental to the other purposes for which the water is being released.

The Parties also agree to "jointly negotiate an enforceable Bear River System Operations Agreement consistent with the [foregoing provisions]."

On October 22, 1999, ScottishPower and PacifiCorp executed a "Memorandum of Agreement Regarding Ashton-St. Anthony Projects" with the State of Idaho through the Department of Water Resources. Pursuant to Procedural Rule 263, we hereby take official notice of this agreement as well. Like the Bear River Agreement, the Ashton-St. Anthony Memorandum recognizes the public need for stability of water rights. To that end, the Memorandum provides that "the water rights presently owned by PacifiCorp on the North Fork (Henry's Fork) of the Snake River must continue to be used consistent with historical practices." In furtherance of this, PacifiCorp and ScottishPower agree that their water rights on the Snake River are constrained by a Contract executed September 28, 1935 between the U.S. Bureau of Reclamation, Fremont-Madison Irrigation District, City of Idaho Falls, and Utah Power and Light Company. PacifiCorp and ScottishPower further agree that PacifiCorp's rights to the use of water for power generation are incidental to the rights to the use of water for other purposes, except for junior water rights for hydropower generation.

One need not look far for evidence of the importance that water has to southern Idahoans. This issue, had it not been successfully resolved by the Joint Applicants, could well have been a stumbling block in satisfying the public interest criterion of *Idaho Code* §61-328. As it is, the Joint Applicants have done a commendable job of ensuring that the status quo regarding water rights will be maintained and the public interest preserved.

The undisputed evidence presented in this case establishes that the merger will not affect the legal status of the water rights currently held by PacifiCorp. ScottishPower will assume ownership of those rights (by virtue of its ownership of PacifiCorp) subject to all the limitations, conditions, and relative priorities that they now possess. Furthermore, we are legally prohibited from taking any action involving an electric utility's failure to protect its water rights from junior appropriators. *Idaho Code* § 61-539. Thus, we find that the state agencies charged with the responsibility to oversee water rights have adequately protected the interests of the people of this state. The Agreements entered into recently by the Joint Applicants ensure that the public interest, as it pertains to water rights, will not be adversely affected because of the merger.

4. Foreign Ownership

The vast majority of those who opposed the merger did so on the basis that ScottishPower is a corporation whose management, offices and/or shareholders are located primarily in a foreign country. The comments made in this regard were often passionate and ranged from general uneasiness to explicit distrust and outrage at the concept of a corporation from a foreign country acquiring an ownership interest in what is perceived as a U.S., or even an Idaho, "resource." In some cases members of the public seemed to equate ScottishPower with a governmental agency of a foreign country. Some of the comments, however, more specifically identified a perceived lack of trust in the ability of ScottishPower's management to understand the needs and concerns of rural Idahoans. Those who commented feared that PacifiCorp would be operated and managed by personnel either living in Scotland or who are from Scotland and who will fail to comprehend or appreciate the electricity needs of, for example, an Idaho potato farmer located on a rural route miles from the nearest city. Many members of the public feared that, in the event they had reason to contact the Company, it would be necessary to call Glasgow, Scotland. Others feared an inability on the part of this Commission to regulate a foreign corporation. Some customers feared that Idaho would lose its relative representation on PacifiCorp's board of directors.

This aspect of the Joint Applicants' filing engendered more controversy and enflamed more passion than any other. The issue of foreign ownership was raised primarily during the public hearings. None of the parties to the technical proceeding contend that the Application should be denied simply by virtue of the fact that ScottishPower is a foreign entity. There were concerns expressed, however, particularly by the Irrigators, regarding the ability of ScottishPower personnel from outside this region to fully comprehend and appreciate the specific needs of Idahoans. As discussed more fully below, we find that we are legally prohibited from denying the merger simply because ScottishPower is not an "American" company. But because the issue is clearly so important to PacifiCorp's Idaho customers, we discuss its various aspects.

We find:

With the increased globalization of economies and cultures, the concept of an "American" company is becoming more obscure. Today's increasingly competitive markets require businesses to search far and wide for materials, labor, and business opportunities. Large businesses whose stock is publicly traded in this country are often owned, at least in part, by

foreign interests. Similarly, U.S. corporations and individuals often engage in the acquisition of or partnership with foreign businesses. In short, corporate mergers make the news almost daily.

It was often expressed during the public hearings in this case that the "country" of Scotland should not be allowed to take over an "American" corporation. In fact, ScottishPower no more constitutes the Scottish government than PacifiCorp constitutes the government of the United States. PacifiCorp is an Oregon corporation whose stock is publicly traded and owned by people living throughout the country, and the world. Not one of PacifiCorp's current members of the board of directors lives in Idaho.[24]

Both ScottishPower and PacifiCorp are investor-owned businesses engaging in precisely the type of economic posturing that many large businesses must consider as an option to remain competitive in today's marketplace. It just so happens that they operate in an industry that is governmentally regulated. We find that the denial of the merger in this case simply by virtue of the fact that ScottishPower is incorporated in another country would put this Commission on very tenuous legal footing. The constitutional and statutory structure under which this Commission functions and pursuant to which we must review this merger does not allow such a ruling.

Indeed, the founding document of this country potentially prohibits such discrimination. Article I, § 8 of the United States Constitution, known as the "Commerce Clause," vests in the United States Congress the power "to regulate commerce with foreign nations, and among the several states." The fundamental principle embodied in the General Agreement on Trade in Services (GATS – a component of the General Agreement on Tariffs and Trade (GATT)) is that foreign countries who are signatories to the agreement will have "most favored nation" status in their dealings with the United States. This means that the United States is not permitted to discriminate against service providers who are citizens of other states or foreign countries. Thus, if any state has a law on its books giving favored treatment to its own citizens, that law will be pre-empted by the GATS treaty.

Regardless of the legal aspects discussed above, we find that the nature of the merger transaction itself has been somewhat misperceived. This merger is essentially what is known as

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[24] Pursuant to Rule 263 of the Commission's Procedural Rules, we take official notice of this fact, which can be found through a review of PacifiCorp's 1998 FERC Form 1 (pages 105-105.2).

a "stock swap." Following the conclusion of the transaction, as proposed by the Joint Applicants, the former owners of PacifiCorp, many of whom are U.S. citizens and some, no doubt, who aren't, will be given the opportunity to become owners in ScottishPower. Thus, ScottishPower will be owned by shareholders located in Scotland, the United States, and in many other parts of the world as well. Furthermore, as noted in other sections of this Order, PacifiCorp will continue to operate on a stand-alone basis, with primarily the same personnel, following the merger. Because of the conditions imposed by this Commission, the ratepayers should notice improved service quality with, at a minimum, a temporary rate reduction. Irrigators in particular should be better served with the addition of an irrigation specialist to PacifiCorp's personnel.

So long as this Commission has regulatory oversight of electric utilities, we will exercise our jurisdiction to ensure that PacifiCorp provides reasonable service at fair rates. In light of the foregoing, we find that the public interest will not be adversely affected by the merger simply because ScottishPower is a foreign based company.

5. Irrigation Concerns

This issue was raised by the Commission during the prehearing conference. In its Notice of Irrigator Service Commitments, the Joint Applicants propose the following conditions to address the concerns of southeastern Idaho irrigators:

1. ScottishPower/PacifiCorp will make available prior to the next irrigation season a dedicated irrigation specialist in the Idaho service territory. This specialist will be available at the local Utah Power Offices in Rexburg and Shelley for consultation appointments. The effectiveness of this service will be reviewed at the end of the 2001 irrigation season.

2. ScottishPower/PacifiCorp will extend the Irrigators HOTLINE facility in the Wasatch Business Center to seven days a week from 7:00 a.m. to 7:00 p.m.

3. ScottishPower/PacifiCorp will publish the Irrigator HOTLINE telephone number in the public telephone directory along with the other Utah Power numbers.

4. ScottishPower/PacifiCorp will work with the irrigators to better identify, on a geographical basis, the location of each electricity supply point. This geographical description should be used when the irrigator is unable to provide either the site identification number (meter number) or the account number. (The meter number or the

account number will remain the preferred terms of reference for site identification.) This proposal, the Joint Applicants contend, will enable the business center and the customer to more effectively communicate and locate the supply point in question, particularly during an outage. The irrigators and the Company will continue to ensure these descriptive locations are updated as required.

5. ScottishPower/PacifiCorp will review in conjunction with the irrigators, the account format to identify improvements that can be made to improve clarity.

The Joint Applicants contend that these irrigator service commitments respond to comments received during the public hearings held in Rexburg and Pocatello, Idaho on July 27 and 28, 1999, and are in addition to the service quality and reliability commitments set forth in the Company's direct testimony.

We find:

The addition of an irrigation specialist to southeastern Idaho is an appropriate first step for PacifiCorp to take toward addressing the generally held belief that the Company is failing to adequately address the needs of its customers. This should provide PacifiCorp customers with access to someone living in the area and specially trained to address their specific needs. Also, the Company's commitment to develop a means to better locate customers' service locations will aid in reducing response time in the event of outages.

The service quality monitoring reports to which ScottishPower has committed itself will enable the Commission and its Staff to track the progress of the Company in improving its overall service quality for all customers. In addition, we direct the Commission Staff to file a report with the Commission within 30 days of this Order containing the results of Staff's informal investigation into the quality of service being provided by PacifiCorp. We find that the many conditions imposed by this Order will ensure that the public interest, in the form of irrigation concerns, will not be adversely affected.

G. Contract Rates of Solutia

Throughout this proceeding, Solutia has drawn attention to its special contract with PacifiCorp and the rates contained therein. Solutia's contract expires on December 31, 2001. Although Solutia's contract still has over two years remaining, it has attempted to use this proceeding as a forum to extend the contract and renegotiate its rates.

For example, in its post-hearing brief, Solutia stated:

> Solutia's opposition to the merger is based mainly on two fundamental concerns. First, that Solutia has been unsuccessful and has made no progress with applicants in negotiating an extension of its Special Contract despite numerous attempts....

We find:

This issue is completely outside the scope of this proceeding. The renewal of Solutia's contract is in no way relevant to the approval of the merger. Even if it were, we find that it is premature to consider a contract that still has two years remaining. We also question the appropriateness of Solutia's opposition to the merger as a form of leveraging to obtain a favorable re-negotiation of its contract. Finally, the level at which we set Solutia's rates will have an effect on the rates of PacifiCorp's other customers. It would be wholly inappropriate for us to allow Solutia to turn this proceeding into a contract renegotiation without soliciting and reviewing the full effect that a contract renegotiation would have on other customers' rates and without allowing other customer classes the opportunity to comment.

H. Conclusion

The statutory criteria governing our review of the merger do not allow for caprice or subjectivity. While public sentiment has been used to impose significant merger conditions, it cannot be used as a surrogate for the clear letter of the law. In this case, that law (*Idaho Code* § 61-328) provides that the merger "shall" be authorized unless the Joint Applicants have failed to satisfy the three criteria discussed throughout this Order. The Joint Applicants carried the burden of proof in demonstrating that the merger would not adversely affect the public interest, would not result in an increase in rates to existing PacifiCorp ratepayers and that they have the bona fide intent and financial ability to continue operating the system in the public interest.

We find above that not only have the Joint Applicants satisfied the statutory criteria of *Idaho Code* § 61-528, but they have gone a step beyond. The criterion of bona fide intent and financial ability was relatively unchallenged in this case. PacifiCorp's Idaho customers should have little concern that as long as this Commission has regulatory oversight, we will continue to "do all things necessary" to ensure that the Joint Applicants continue to provide service as a public utility. There was absolutely no evidence presented during this case that their ability to do so will be impaired by this merger.

The Joint Applicants had the burden to prove that PacifiCorp's rates will not increase as a result of this merger. The evidence initially presented established that the merger would

result in significant cost savings that would ultimately result in lower overall rates. The Joint Applicants backed this commitment up through a guaranteed reduction in operating expenses. This alone satisfies the requirements of § 61-328. The Joint Applicants put to rest any lingering doubts, however, when they committed to a merger rate credit that, when combined with the additional rate moratorium that we impose, will guarantee that rates will be reduced at least for two years. After that PacifiCorp's Idaho ratepayers will receive two more years of rate credit. Their rates will go up only if PacifiCorp requests and is authorized by this Commission to increase its rates in an amount exceeding the rate credit. This would not have occurred absent the merger.

Finally, there was ample evidence presented in this case that the public interest will be enhanced by this merger. That is, of course, not the standard by which we are required to review the transaction. The Joint Applicants were simply required to prove that the merger would not adversely affect the public interest. Again, they exceeded their statutory burden by, among other things, committing to an extensive set of service quality standards. They also resolved any doubts that might have existed regarding the effect of the merger on Idaho water rights. The Joint Applicants addressed the specific needs of southeastern Idaho irrigators. In short, they refuted any doubts that the merger will adversely affect the public interest.

The requirements of *Idaho Code* § 61-328 have been fully satisfied. We also find that, based on the evidence discussed throughout this Order, the merger, pursuant to *Idaho Code* § 61-902: (1) is not inconsistent with the public interest; (2) is not unnecessary, inappropriate or inconsistent with the proper performance by the Joint Applicants in service as a public utility, and; (3) is not prohibited by Title 61 of the Idaho Code. The merger of ScottishPower and PacifiCorp is approved subject to the Conditions of Merger Approval set forth in section III.B of this Order.

I. Securities Issuance

Regarding PacifiCorp's securities issuance request, we make the following findings of fact and conclusions of law:

1. Upon completion of the transaction generally as described in the Amended and Restated Agreement and Plan of Merger, dated as of December 6, 1998 and amended as of January 29, 1999 and February 9, 1999, and amended and restated as of February 23, 1999 ("Merger Agreement"), PacifiCorp will become an indirect, wholly owned

subsidiary of a new holding company named Scottish Power plc and an affiliate of the existing electric utility, Scottish Power UK plc.

2. Pursuant to the Merger Agreement, and for the purpose of effectuating the merger of PacifiCorp and ScottishPower, all of the outstanding shares of common stock of PacifiCorp will be cancelled and converted, and PacifiCorp will issue new common stock to an entity wholly-owned by Scottish Power plc, which stock shall constitute the only outstanding common stock of PacifiCorp.

3. PacifiCorp has paid the fees required by *Idaho Code* § 61-905.

4. PacifiCorp is an electrical corporation within the definition of *Idaho Code* § 61-119 and is a public utility within the definition of *Idaho Code* § 61-129.

5. This Commission has jurisdiction over this matter pursuant to the provisions of *Idaho Code* §§ 61-328 and 61-901 *et seq.*

6. The purpose for the proposed issuance of common stock is a lawful purpose under the public utility law of the State of Idaho and is consistent with the public interest.

We find:

Based on the foregoing, the Application for a securities issuance to effectuate this merger is approved.

J. Intervenor Funding

On September 13, 1999, the Irrigators filed an Application for Intervenor Funding in this case pursuant to *Idaho Code* § 61-617A and Rules 161-165 of the Commission's Rules of Procedure, IDAPA 31.01.01.

In their Application, the Irrigators claimed the following costs and fees:

Legal Fees (Mark Nye – 246 hours @ $150/ hr.)	$36,900
Travel, meals, and lodging, postage, fax, photocopies and miscellaneous expenses	$834.51
Expert Fees (Tony Yankel – 396 hrs @ $100/hr.)	$39,600
Travel, meals, lodging, postage, photocopies and miscellaneous expense	$1362.46
Total	$78,696.97

According to their Application, the Irrigators note that, contrary to the position taken by the Commission Staff, they opposed the merger. The Irrigators also note that they addressed the disparity in irrigation rates in eastern Idaho; an issue they contend that was raised by the Commission and that no other party addressed. The Irrigators argue that the time spent by their attorney and expert witness in preparing the Irrigator's case is reasonable given the nature of this case. The Irrigators further allege that the costs incurred by them in participating in the case constitute a significant financial hardship for their organization which is a non-profit corporation relying on voluntary member dues and contributions.

We find:

We find that the Irrigators' Application in this case was timely filed and satisfies all of the other "procedural" requirements set forth in Rules 161-165 of the Commission's Rules of Procedure. Rule 161 of the Commission's Rules of Procedure states:

> **161. Cases in which intervenors may apply for funding (Rule 161).** In any case involving regulated electric, gas, water or telephone utilities with gross Idaho intrastate annual revenues exceeding $1,500,000, intervenors may apply for intervenor funding (emphasis added).

Rule 165 of the Commission's Rules of Procedure contains the following "substantive" requirements: (a) the Irrigators' involvement in this case must have materially contributed to the Commission's final decision, (b) the costs of intervention awarded are reasonable in amount, (c) the costs of intervention are a significant hardship for the Irrigators, (d) the recommendations of the Irrigators differed materially from the testimony and exhibits of Commission Staff, and; (e) the Irrigators addressed issues of concern to the general body of ratepayers.

To the extent that the Irrigators scrutinized the cost savings estimates predicted by the Joint Applicants, questioned the effect that the merger will have on the public interest and offered insight into the specific concerns of PacifiCorp's Idaho irrigation customers, their participation in this case materially contributed to our decision and was of benefit to the general body of PacifiCorp's ratepayers. Their recommendations certainly differed, on the whole, from those of the Commission Staff. We find, however, that the costs and expenses incurred by the Irrigators are excessive given the relatively limited scope of their testimony and participation in this case. The Irrigators primarily focused on what they believe to be a disparity between the rates of PacifiCorp's Idaho irrigation customers and customers in other states or served by other

utilities. We noted earlier that this issue is completely irrelevant to this merger. Moreover, the Irrigators were misleading in their comparison of Idaho PacifiCorp irrigation rates with those of Utah. Consequently, we do not find it appropriate to award the Irrigators the full $25,000 available intervenors pursuant to *Idaho Code* § 61-617A and Rule 165 of the Commission's Procedural Rules. Instead, we allow them the full recovery of their out of pocket expenses totaling $2,196.97. We further allow them recovery of 10% of their attorney's and expert witness fees which results in $7,650 that, when combined with out of pocket expenses, results in a total intervenor funding award of $9,846.97.

ORDER

IT IS HEREBY ORDERED that the Application of PacifiCorp and ScottishPower for approval of a merger transaction and approval of securities issuance is approved subject to the terms and conditions set forth herein.

IT IS FURTHER ORDERED that the Idaho Irrigation Pumpers Association is awarded intervenor funding in the amount of $9,846.97.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. PAC-E-99-1 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this order or in interlocutory Orders previously issued in this Case No. PAC-E-99-1. 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 2018.

Commissioner Hansen Dissent Attached
DENNIS S. HANSEN, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

PAUL KJELLANDER, COMMISSIONER

ATTEST:

Myrna J. Walters
Commission Secretary

vld/O:PAC-E-99-1_bp6

DISSENTING OPINION

OF

COMMISSIONER DENNIS S. HANSEN

I must respectfully dissent from the majority opinion in this Order. I believe the record in this case does not support approval of the merger between PacifiCorp and Scottish Power, plc ("Applicants").

PacifiCorp and ScottishPower have failed to prove the merger is not adverse to the public interest, based in part on *Idaho Code* § 61-328, as well as public and written testimony. Idaho law requires the Commission to make several findings based on the facts as established in the Commission record before it can approve an electric company merger. More precisely, the Commission must consider and find that "the public interest will not be adversely affected, that the cost of and rates for supplying service will not be increased . . . and that the applicant . . . has the bona fide intent and financial ability to operate and maintain . . . [the] property in the public service. . ." *Idaho Code* § 61-328. While the majority finds that approving the merger is in the public interest, after carefully considering the record, I find that the factual record does not clearly establish that the "public interest will not be adversely affected" and further find that the Applicants have not met their burden.

According to the Idaho Supreme Court, "public interest" cannot be perfectly defined. *Bermensolo v. Tennyson Transfer & Storage Co.,* 82 Idaho 254, 258, 352 P.2d 240, 242 (1960); *see also Browning Freight Lines, Inc. v. Wood*, 99 Idaho 174, 180, 579 P.2d 120, 126 (1978). In general, however, where the Commission is required to consider the "public interest," it must look to "the interest of the public, their needs and necessities and location and, in fact, all the surrounding facts and circumstances to the end that the people be adequately served." *Malone v. Van Etten*, 67 Idaho 294, 301, 178 P.2d 382, 385 (1947). In past cases, the Idaho Supreme Court has affirmed Commission decisions concerning public interest where the Commission has weighed such factors as the existence of competition, community growth and public need. *Bermensolo.,* 82 Idaho at 258, 352 P.2d at 242. What constitutes public need for services depends on the locality involved and the particular circumstances of each case. *Id.* In other words, the Commission must decide what facts it will consider when determining whether a merger is not adverse to the public interest – not the Applicants. Moreover, the burden is on the

Applicants, in this case PacifiCorp and ScottishPower, to demonstrate that the public interest is not adversely impacted by the merger.

At the prehearing conference held on February 18, 1999, the Commission identified several factors as being relevant to the Commission's consideration what impact the merger would have on the public interest. In particular, I requested PacifiCorp and ScottishPower to document the effects the proposed merger would have on irrigation rates, the future BPA exchange credit and the subscription eligibility in southeastern Idaho. Tr. p. 19. I requested the parties to present "concrete" evidence establishing their claim that rates would be lower than they would be without this transaction and demonstrating how the projected claimed efficiencies would be achieved. *Id.* In addition, I questioned PacifiCorp's and ScottishPower's assertion that in creating those efficiencies additional generation assets would not be sold and that the current workforce would not be reduced. I asked them to present evidence supporting their claims. *Id.* Finally, I requested the parties to discuss whether the Commission would have future authority to approve or disapprove any sale of plant facility or associated water rights. Tr. p. 18-19.

In addition, during the prehearing conference, other factors were included. The chair opened up for discussion the issues the parties thought should be addressed in this case. For example, Mr. Budge, representing Solutia, said, "we think that you've outlined issues that we see." Tr. p. 22, lines 7-8. He went on to say, "Solutia does have a concern that the management change and what authority may be moved from Portland, in this case, Glasgow, might have on that relationship." *Id.*., Tr. p. 23, lines 13-16. No one objected to including these issues as part of the case at that time.

First, I believe it fundamental that the Commission consider public opinion and concern. I respectfully disagree with the majority's decision that the Applicants met their burden of proof to show that the merger was not adverse to the public interest. I find that the Applicants failed to adequately respond or answer the many concerns the public voiced concerning the merger at the numerous public hearings.

The four public hearings generated record participation, estimated at over 1,000 people. Communities were represented by county commissioners, mayors, city councilmen, local chambers of commerce, the Idaho Farm Bureau, local legislators, newspapers, farmers, ranchers, irrigators and water users, customers, and concerned individuals. Over 100 people testified during the hearings, many bringing signed petitions which strongly opposed the merger. Only

five individuals who testified supported the merger. Approximately 261 letters were received by the Commission. Close to 99% were against the merger. These people felt the merger was extremely adverse to the public interest and voiced several concerns.

Second, the Applicants failed to provide "concrete" evidence of where and how the claimed efficiencies in the merged operation would bring about savings to the customers in Idaho. These claimed efficiencies are important to mitigating the projected merger costs in order to assure customers rates will not increase – one of the findings this Commission must make before a merger can be approved.

Third, ScottishPower did not provide adequate evidence to support their claim that rates will be lower than those rates would be without the merger. While the Commission does not need to find that rates will decrease as a result of the merger, the Commission must find that the merger will not cause them to increase. ScottishPower refused to guarantee they would not increase.

Fourth, the Applicants failed to provide sufficient proof that the merged company will maintain an adequate workforce in southeastern Idaho to provide quality service to customers.

Fifth, the evidence in the record does not support a finding that ScottishPower has the required experience and expertise to maintain electrical properties in southeastern Idaho. In fact, the evidence seems to indicate ScottishPower does not have the necessary experience or sensitivity to adequately serve the Idaho rural agricultural customer.

Sixth, the record does not contain sufficient proof that management and other major decisions affecting Idaho would be transferred from management located in Scotland to a locally influenced and accessible management in Idaho.

I will now discuss these six reasons for dissent in more detail.

I believe that while public opinion may not be the only factor upon which the Commission may rest its decision, the Commission must carefully consider public opinion and concerns and determine whether those concerns are adequately answered by the Applicants in the record. Once these concerns are raised, the burden is on the Applicants to answer them and demonstrate that the merger will not be adverse to the public interest. Public hearings are some of the best ways to determine the public interest where the public can freely express those opinions. The Commission should not ignore the overwhelming majority of PacifiCorp ratepayers or disregard more than 1,000 southern Idaho ratepayers who believe the merger will

be adverse to them. In many cases the public identified those same issues earlier identified at the pre-hearing conference – the lack of evidence supporting the creation of claimed efficiencies or lower rates, maintenance of quality of service, existence of sufficient expertise for ScottishPower or ScottishPower responsiveness to Idaho customer needs. The Applicants did not adequately respond to the public's concerns that the merger would adversely impact them.

1. The Applicants failed to provide concrete evidence of where and how the merged company would create efficiencies in its operation of the merged company that would protect customers against future rate increases related to the merger.

With respect to whether the merger will create the efficiencies and cost improvements claimed by the Applicants, several witnesses identified problems associated with those assertions. For example, Frank Priestly, President of the Idaho Farm Bureau Federation, representing approximately 50,000 family members, testified:

> ScottishPower cites as examples of its management efficiencies and skills, but yet it has said that the Company offers an executive severance package of $20 million to PacifiCorp executives, $50,000 cash to PacifiCorp board members, 15 million in employee bonuses and retention packages, and $1 a share for PacifiCorp shareholders as a bonus for voting for the merger and increasing PacifiCorp's unsecured debt by $5 billion.

Tr. p. 1609-1610. I agree with Mr. Priestly that "Somehow this doesn't equate to either frugality or demonstration of management skills and efficiency on the part of ScottishPower." *Id.*

Public witness Pallante testified at the Pocatello public hearing that:

> PacifiCorp and ScottishPower have repeatedly been asked to provide specifics of the efficiencies and cost improvements to be gained by the merger and have failed to provide these. They have testified that they have not yet undertaken such studies and will not until six months after the merger is approved. As a ratepayer, I cannot accept blind promises that I will somehow be better off. If there are efficiencies to be gained by combining two companies on two sides of the Atlantic, why won't the Companies step up to their obligation and provide the necessary details? Furthermore, why are they not confident enough to provide guarantees to the public that rates will go down, or at a minimum, not increase?

Tr. p. 1225-1226.

I agree with Mr. Pallante. It is not sufficient to merely assure the Commission that such efficiencies will occur. The burden is on the two companies to support that assertion with real

evidence. The Applicants do not even know what efficiencies will occur, nor can they quantify the savings. A study will be done 6 months after the merger. While I agree with the majority that it is not necessary to demonstrate that rates will decrease, it is necessary to show that the merger will not cause a rate increase in the future and I believe that the "efficiencies" claimed by the Applicants to be created by this merger are necessary to produce such rate stability. The reason these claimed cost savings are important is that they act as an offset to the costs of the merger and mitigate any possible rate increases. *See* Richardson testimony at Tr. p. 171-172.[25] I agree with the public witnesses that the record does not support such a finding. Moreover, I do not believe that imposing conditions on the merged company can adequately address these concerns.

I am most concerned about the apparent inability of ScottishPower to identify the areas or quantify the amounts of expected cost cutting and savings - these remain speculative and uncertain. ScottishPower did not identify potential cost savings above the projected $10 million in performance efficiency ($450,000 Idaho's Share). Moreover, the claimed cost savings and benefits to be derived from this proposed merger have not been studied or quantified and remain speculative and uncertain.

ScottishPower's witnesses repeatedly testified that no studies to either establish the existence of the claimed future efficiencies or to quantify those efficiencies have been completed and would not be completed until approximately six months after the merger was finalized. *See for example* Tr. pp. 146-147; Tr. p. 150-155; Tr. pp. 169-172; Tr. p. 290-291; Tr. p. 595.

Mr. Richardson testified in the hearings on behalf of the Applicants and in response to cross-examination as follows:

Q. The Company does not intend to identify specifically the cost savings until you have the transition plan developed. Is that true?
A. Other than the 10 million to which we have committed.
Q. Other than the 10 million?
A. That's correct.
Q. Other than the 10 million?
A. That's correct.
Q. And that plan won't be developed for approximately six months?

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[25] Richardson: "We have a genuine wish to focus on costs, and our hope is that that focus on costs will ameliorate and perhaps in time even reduce rates. I think I've said that already. "

A. That plan will be presented to the Commission six months after approval, yes.

Tr. p. 151.

ScottishPower witness MacRitchie testified in his rebuttal testimony in response to a question regarding the when the Commission would learn about future cost savings:

> No later than six months after the closing date of the merger, ScottishPower and PacifiCorp will provide the merger transition plan to the Commission. This plan will include anticipated time lines, actions necessary to implement the merger and realize the proposed benefits (including expected costs savings), and the estimated associated capital expenditures and expenses and anticipated workforce changes.

Tr. p. 595.

Until the plan is developed, MacRitchie testified he had no idea what those costs would be or what the expected savings would be. Tr. p. 602-603. Moreover, he indicates that he would view those costs as recoverable. *Id.* Based on this kind of testimony, I find that the record is not sufficiently complete to allow me to find that rates will not increase as a result of the merger as I am required to do by Idaho law. In essence I believe that the Commission is being requested to approve this merger before the essential information regarding the impact the merger will have on ratepayers is known – even to the Applicants. The Applicants are required to meet the burden of proof before approval is given. It makes no sense to meet the burden six months after approval. Once the merger is approved it cannot be undone if that future study demonstrates no cost savings or efficiencies inuring to the benefit of the ratepayers and a resulting rate increase. *See for example* Tr. p. 619. I agree with public witness, Pallante, "I cannot accept blind promises that [customers] will somehow be better off." *See* Tr. p. 1225.

2. ScottishPower did not provide adequate evidence to support their claim that rates will be lower than they would otherwise be without the merger or that the merger will not cause rates to increase.

I find that the evidence in the record does not support a finding that "the cost of and rates for supplying service will not be increased by reason of" the proposed merger. This is a pre-condition to finding that the merger should be approved. *Idaho Code* § 61-328. Moreover, I am not convinced that freezing rates for a period of time as a pre-condition to approval addresses this problem. I note that PacifiCorp recently agreed to refrain from requesting any type of rate

increase before January 2002, in response to a previous Staff audit. Therefore, any rate freeze for that period of time clearly is not related to the merger.

In addition, I am concerned that the Applicants specifically testified they would not guarantee ratepayers rates will decrease, stay the same or will not increase as a result of the merger. There was no evidence presented to address what PacifiCorp rates may be in the future after PacifiCorp's rate freeze. Therefore, I cannot determine that ScottishPower's rates would be lower or the same as without the merger. This claim is only speculative.

Furthermore, I am puzzled by news articles that seem to contradict testimony in this case. For example, according to an article in the Salt Lake City's Deseret News dated November 4, 1999, "ScottishPower chief executive Ian Robinson said PacifiCorp customers will face sharp price increases after the merger closes."[26] In the same article, Alan Richardson, the ScottishPower official who will be the merged company's CEO, also is quoted as saying "these price increases are 'nothing new' and do not change the oft-repeated promise that rates will be lower under Scottish Power than they would be without the merger." This apparent contradiction illustrates my concern. While throughout this case, the Applicants have repeatedly stated rates will not increase, indeed will be lower, as a result of the merger, they also refuse to "guarantee" rates will not increase.

Mr. O'Brien, Vice President and Chief Operating Officer for PacifiCorp, testified on cross-examination as follows:

> Q: And would it also be true that the – PacifiCorp is making no commitment to freeze rates at existing levels at this time?
> A: That is true.
> Q And also true that the Company is not making commitment at this time to cap rates at any particular level if it chooses to file a rate increase in the future?
> A: That is true.

Tr. p. 284.

ScottishPower witness Richardson testified similarly:

> Q And is it a fact that ScottishPower makes no commitment or guarantee to the ratepayers that the savings that you anticipate to be generated from

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[26] Although this news article is not part of the Commission record, pursuant to Commission Rule 263, I take official notice of this article. IDAPA 31.01.01.263.

these particular transaction benefits will exceed the cost of the particular benefits?

A. That is true, but our experience as utility managers is that these are just the sort of investments that do deliver the economies.

Q. So what you're basically saying, Mr. Richardson: That even though you've made no specific study or analysis to quantify the benefits, as a utility manager, based on your experience, you're quite confident that those benefits will be achieved?

A. I am very confident.

Q. You are very confident. And despite the fact that you're very confident that you'll receive the benefits, would it be accurate to say that you're not sufficiently confident to protect the ratepayers by providing any kind of a rate freeze or cap?

A. No, I don't think that is appropriate.

Q. Okay, it's not appropriate, meaning you are willing to provide a rate freeze or cap?

A. No, what I say is that our commitment to costs and cost reductions will be reflected in the transition plan and in the annual filings that follow, and there will be opportunities going forward in rate cases to take advantage of those cost reductions in moderating or in time perhaps even reducing rates.

Tr. p. 147.

Numerous public witnesses also expressed concern that rates would increase, questioning the "assurances" being made by the Applicants – assurances that I do not believe can be met simply by conditioning the approval on a rate freeze for a specific amount of time. For example, Mr. Pallante testified regarding several new programs proposed by ScottishPower and appropriately suggested that the proposed programs and spending seem to indicate a need for future rate increases. He said:

> The proposed merger has promised new programs and services that no one has asked for as an enticement to elicit support. Unfortunately, most of the cost of these programs will be borne by the ratepayers. That sounds like a cost increase to me, which will eventually lead to a rate increase. Idaho Code has a standard as part of the approval process that there be no cost increase or rate increase as a result of the merger. That is not the end of my cost concerns. ScottishPower has proposed spending 135 million on new programs; however, the ratepayers will only have to pay for 120 million of this. There are approximately $240 million of acquisition and transition costs which will also be passed on the ratepayers, including $20 million of severance packages for 26 highly-compensated managers of PacifiCorp. I would suggest that all these costs be borne by the share owners, not the ratepayers.

Tr. p. 1226-27. I agree. I do not believe that the companies can make the proposed expenditures without causing future rate increases.

Public witness Chad Christensen of Soda Springs expressed concern that the Applicants would not guarantee that rates would not increase: "It appears to me that the customer is being ignored." Tr. pp. 1437-1438. Preston Mayor Jay Heusser testified:

> I read comments that no dramatic rate increase was planned, but small increases may be needed in the future. I believe we're already paying two or three cents more, especially more than Idaho Power, that probably should be serving our area. I have a great concern. I do not see where our local farmers or irrigators have a firm rate or commitment. . . . . I believe our local farmers are stressed with the current prices there are now for all costs, and that they cannot handle any rate increase as the economy goes now.

Tr. p. 1554. These are only a representative sample of the public witnesses.

Evaluating the potential impact this merger may have on rates is critical. Farmers are especially vulnerable. Mr. Priestly wrote to the Commission on behalf of Idaho Farm Bureau Federation: "One only needs to look at the deep well pumping area around Arco, Id. for a demonstration of the effects of increased electric rates on viability of deep well pumpers. Most of those farms have permanently closed operations." Idaho Farm Bureau Federation Letter dated August 4, 1999. I believe that the Applicants should be required to provide data and explanations before – not after – the merger.

3. The record does not support a finding that the quality of service will not suffer as a result of the merger.

Essential to making a determination that the merger is not adverse to the public interest is a finding that reliability and quality of service to the customers will not diminish as a result of the merger. There are a number of factors to be considered in determining the potential impact the merger will have on service – the size and location of the workforce, where customer concerns are handled, the sensitivity of the merged company to the unique problems faced by its customers and plans to meet those concerns. The Commission should carefully consider these factors, because once a decision is made to approve a merger, the Commission may be left with customer complaints.

Senator Noh, Chairman of the Idaho Senate Resources and Environment Committee, testified at length before the Commission at the public hearing in Pocatello on July 28, 1999. He suggested that "[r]eliability of service and delivery of this most critical of commodities will

likely be adversely affected by the merger." Tr. p. 1198. Senator Noh examined ScottishPower's actual experience and based on that history, expressed a lack of confidence in ScottishPower's competence to deliver electrical service to a rural Idaho irrigation environment at low cost. Tr. p. 1199.

Among other things Senator Noh noted:

> . . . the importance of constant delivery of power to the irrigated desert environment will not be fully understood by a Scottish culture drenched in rain. This has already been illustrated with instructive clarity by the focus of Scottish executives upon the great benefits of a $50 rebate for failure to restore power in 24 hours. The readiness of Scottish Power leaders to speak of the international consolidation of electrical utilities as being no different than the consolidation of any other commodity or service is further evidence that they do not comprehend the unique importance of electricity in rural, arrid [sic] America.

Tr. pp. 1199-1200.

Like Senator Noh, I also have reservations about ScottishPower's ability to adapt to providing power to Idaho's rural communities or to respond to the irrigator needs.

Public witnesses articulated exactly how inadequately ScottishPower's proposed policy for addressing outages would affect them.

Public witness Eulalie Langford testified: "I have been told that ScottishPower will guarantee that if my power goes off, they will pay me $50. Does this mean that if my power goes off at five p.m. on Friday, that rather than pay overtime for a service manager to restore my power on the weekend, that I will receive a check for $50 and have to wait until Monday morning for my power to be restored? This is not in my best interest, nor is it in the interest of my community." Tr. p. 1386.

I agree with Ms. Langford. Twenty-four (24) hours for an irrigator to be without power may ruin a crop and destroy an economy. Public witness Raybould testified: "If I lose power for 24 hours, it could cost many thousands of dollars in loss of quality to a potato crop. . . . do they just plain not understand the current level of service we enjoy in Eastern Idaho here now." Tr. p. 1115.

Understanding the special needs presented by agricultural customers, highly dependent on predictable and reliable power, is essential for any power company seeking to serve eastern Idaho. Proposed actions like these add to the perception that ScottishPower is ignorant about the very customers they intend to serve. When farmers examined the proposed merger, they "found

few positives and have some very deep concerns that such a merger is not in the public's best interest and certainly not in the farmers' best interest." Idaho Farm Bureau Federation Letter dated August 4, 1999.

The Commission record calls into question ScottishPower's experience and expertise in responding to rural agricultural community customer needs in arid Idaho. Such proposed policies demonstrate an extraordinary lack of understanding for the Idaho agricultural communities it will be serving. As public witness Burgoyne stated: "this is a company in a country where they do not even understand, need, or practice the concept of irrigation. God takes care of their irrigation. They get rainfall every day." Tr. p. 1571.

Service quality and service responsiveness was also mentioned by several witnesses, echoing concerns I raised at the pre-hearing conference.

Ms. Langford testified as to her experience with PacifiCorp when management was moved to Portland, Oregon:

> When the management of my electric utility company moved from Salt Lake City, Utah, to Portland, Oregon, the quality of service was poorer rather than better. Bigger is not better. We received much better service from a small company than from a large one. I am convinced that if this proposed merger takes place, my electric utility service will be worse than it is now.

Tr. p. 1386.

Senator Lee summarized many of the public witnesses' concerns about service responsiveness:

> Then we had the PacifiCorp merger, and as I've indicated, there was a tremendous reduction -- cost-saving reduction -- but there was a loss of a lot of familiarity with personnel. We began to have to communicate with Salt Lake and with Portland, and it was difficult sometimes to get response, not so much on the service but on other aspects of it. And, now, with this particular proposed merger, we're wondering, how can there be more -- more of the same thing on top of what's already been done? We think they're right to the bare bones. And I've even heard comments, Are we going to have to go to Glasgow now to get our power bills resolved? Because that's what's happened with their moving personnel out of and closing down some of these local district offices in Idaho.

Tr. p. 1080.

I agree that these are legitimate concerns. Even though the record indicates that ScottishPower plans to operate out of Portland, instead of Glasgow, Scotland, they also testified

that the many management positions in Portland would be filled with Scottish management people. So to determine where the decisions will be made, Portland or Scotland, it doesn't make much difference if ScottishPower management is making the decisions with their European background, knowledge, and influence -- it is not where management sleeps at night, it is the experience that counts. ScottishPower has not demonstrated to me that it is sensitive to the unique service requirements and concerns of this rural agricultural community located in an arid area.

Moreover, I am concerned over the dramatic change ScottishPower's management will face running a United States utility. In the United States, utilities are regulated and in this case, PacifiCorp is regulated by several states and the federal government. ScottishPower management has no experience with United States regulated utilities with the size and diversity of PacifiCorp. It has only a limited history and experience (since 1991) as a private utility in the United Kingdom. It does not understand irrigation requirements or arid areas.

Finally, I am concerned about ScottishPower's stated intent to use PacifiCorp as a platform to expand into other electric and gas businesses in the United States. *See* Richardson testimony Tr. p. 108. To me, this means that the management will not be appropriately focused on providing service to its Idaho customers but rather on future economic markets.

SUMMARY

As Governor Kempthorne said in his statement to the Commission, "The State of Idaho and Idaho PacifiCorp customers and ratepayers have legitimate concerns over the proposed merger offer of ScottishPower. Idaho customers must be treated fairly and consider their concerns, and rely heavily on their suggestions." I share those concerns with Governor Kempthorne. While I agree with the majority that the Commission does not simply rely on publicly expressed sentiment in making a decision, it should carefully weigh that sentiment and those concerns against the facts presented by the Applicants. Representative Geddes reminded us at the Pocatello hearing that the Commission placed significant weight on public opinion when deciding whether to expand telephone access in Southern Idaho and, as he said, "it's wise to listen to the public you represent." Tr. p. 1263. The public has made it perfectly clear that they feel this proposed merger is adverse to their interests. The Franklin County Commissioners summarized that sentiment when they wrote " we think you got the feeling of the people we represent in Franklin County. Almost 100% of the people in Franklin County are against the

takeover of PacifiCorp by ScottishPower." Franklin County Commissioners Letter dated September 8, 1999. A letter received from *The Idaho Enterprise* reporter Bonnie Bott where she says "Never before in all the time I have worked at this job, have I ever witnessed an issue where public sentiment is all one-sided until now. Virtually everyone I talk to are opposed to the Idaho service area being part of PacifiCorp/ScottishPower."

I believe that the public expression given in testimony should be a key factor in determining whether this merger is adverse. The Applicants have the burden of proof to establish that this adversity does not exist, which I believe they have failed to do. In this case, I do not believe that the Applicants have met their burden in responding to nearly unanimous public sentiment and concerns regarding the impact of the merger on rates and service quality. Therefore, I respectfully dissent.

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COMMISSIONER DENNIS S. HANSEN