

ORDER NO. 99-616

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 918

In the Matter of the Application of Scottish)
Power plc and PacifiCorp for an Order)
Authorizing Scottish Power plc to Exercise)
Substantial Influence Over the Policies and)
Actions of PacifiCorp.)

ORDER

DISPOSITION: APPLICATION GRANTED

BACKGROUND AND PROCEDURAL HISTORY

On December 31, 1998, PacifiCorp and Scottish Power plc (ScottishPower) (collectively Applicants) filed a joint application with the Public Utility Commission of Oregon (Commission), seeking a Commission order authorizing ScottishPower to exercise substantial influence over the policies and actions of PacifiCorp, pursuant to ORS 757.511, and authorizing the issuance of PacifiCorp common stock incidental to the proposed transaction, pursuant to ORS 757.410 and 757.415. As a result of the proposed transaction, ScottishPower will become an affiliated interest of PacifiCorp, as defined in ORS 757.015(1) and (2).

The proposed transaction is described in the Amended and Restated Agreement and Plan of Merger between New Scottish Power plc, Scottish Power plc, NA General Partnership, and PacifiCorp, filed with the Commission on March 31, 1999, as Appendix 1-A.¹ A Merger Sub will be established to consummate the merger.² The Merger Sub will be an Oregon corporation wholly owned by NA General Partnership, which is a Nevada corporation indirectly wholly owned by Scottish Power plc. The Merger Sub will merge with and into PacifiCorp, with PacifiCorp as the surviving entity. Thereafter PacifiCorp will become an indirect, wholly-owned subsidiary of New Scottish Power plc. New Scottish Power is intended to be a new holding company for Scottish Power plc. New Scottish Power plc will be renamed Scottish Power plc, and Scottish Power plc will be renamed Scottish Power UK plc.

¹ The Amended and Restated Agreement and Plan of Merger replaces the original Agreement and Plan of Merger filed with the joint application as Appendix 1 on December 31, 1998.

² The Merger Sub will be formed immediately prior to the closing date of the merger for the purpose of effectuating the merger. Amended and Restated Agreement and Plan of Merger at 2.

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According to the joint application, ScottishPower is a public limited company registered in Scotland, with multi-utility businesses in the United Kingdom, including approximately five million customers in three distinct geographic areas across Scotland, England, and Wales. ScottishPower provides electricity generation, transmission, distribution and supply; water and wastewater services; gas supply; telecommunications; electrical appliance retailing; and technology and contracting services. It has a market capitalization of more than \$12 billion, with assets of approximately \$9 billion, shareholder equity of approximately \$2.75 billion, and annual revenues of approximately \$5 billion. With regard to its experience in the electric industry, ScottishPower, through one or more of its businesses, owns and operates coal, hydroelectric, and wind generating facilities with a net available capacity of 3500 megawatts (MW), and operates 62,000 kilometers of underground cable and 50,000 kilometers of overhead lines.

The Commission opened this docket to determine whether approval of the joint application will “serve the public utility’s customers in the public interest,” as required by ORS 757.511(3). Although the statute allows the Commission only 19 business days within which to make this determination, PacifiCorp and ScottishPower extended the deadline on several occasions, with the last extension ending on October 6, 1999.

A prehearing conference was held on January 29, 1999, to discuss timelines for intervention, discovery, prefiled testimony, settlement conferences, and the hearing. The procedural schedule adopted at the conference was subsequently memorialized in a Conference Report issued on February 4, 1999. More than 30 parties were granted intervention in this docket.³ They include representatives of PacifiCorp’s residential and industrial customers, other electric and gas utilities, the Bonneville Power Administration (BPA), several cities, and various individuals and representatives of numerous public interest groups.

Applicants filed an amendment to their application on March 31, 1999, reflecting changes in the merger agreement. Public comment meetings were held in Portland, Medford, Klamath Falls, and Bend on, respectively, May 19, 1999, May 25, 1999, May 26, 1999, and May 27, 1999. A workshop was held on March 15-16, 1999, and settlement conferences were held on May 6-7, 1999, June 7-8, 1999, June 15 and 17, 1999, and July 13-14, 1999. On July 14, 1999, three stipulations were filed: the Stipulation Relating to Conservation Programs, the Stipulation Relating to Low Income Customers, and the Stipulation Relating to Low Income Weatherization. A fourth stipulation, the Stipulation Relating to Performance Standards and

³ The following persons or entities were granted intervention: Center for Environmental Equity; Utility Reform Project; Portland General Electric Company; Pope and Talbot, Inc.; Northwest Natural Gas Company; Citizens’ Utility Board of Oregon; Robert Gilkey; NW Energy Coalition; Natural Resources Defense Council; Avista Corporation; Lloyd K. Marbet; Vulcan Power Company; Nancy J. Newell; Charles L. Best; Industrial Customers of Northwest Utilities; Renewable Northwest Project; Oregon Wildlife Federation; Northwest Geothermal Company; Community Action Directors of Oregon; Oregon Energy Coordinators Association; Ater Wynne LLP; City of Portland; Roseburg Forest Products; Local Union #659, I.B.E.W.; Weyerhaeuser Company; Public Power Council; Northwest Environmental Advocates; Eugene Rosolie; Daniel W. Meek; Tillamook People’s Utility District; City of Hermiston; and Bonneville Power Administration.

Customer Guarantees, was filed on July 22, 1999, as an attachment to the Hearing Procedure List. A fifth stipulation, the Stipulation Supporting Approval of Application of ScottishPower and PacifiCorp Under ORS 757.511, was filed on July 27, 1999. On July 28, 1999, the parties filed a Second Revised Hearing Procedure List.

The hearing commenced on July 29, 1999, and concluded on July 30, 1999.⁴ At the time of the hearing only two parties continued to actively oppose the proposed merger transaction: the Industrial Customers of Northwest Utilities (ICNU) and Vulcan Power Company (Vulcan). Approximately two-thirds of the way through the hearing, Vulcan withdrew its objections to the Applicants' joint application, based upon clarifications and commitments made during the course of the hearing. One set of simultaneous briefs was filed by various parties on August 13, 1999.

FINDINGS OF FACT

The Public Utility Commission of Oregon, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

Stipulations and Conditions

The main provisions of the five stipulations are summarized below. The full provisions are set forth in the stipulations themselves, and the summaries are not intended to substitute for the text of the stipulations.

1. Stipulation Relating to Conservation Programs

This stipulation was executed on July 13, 1999, between Applicants, Citizens' Utility Board of Oregon (CUB), NW Energy Coalition (NWEC), City of Portland, Renewable Northwest Project (RNP), Natural Resources Defense Council (NRDC), Oregon Energy Coordinators Association (OECA), and the Staff of the Commission (Staff). The purpose of the stipulation is to resolve all issues among the signatory parties relating to the impact of the merger on PacifiCorp's conservation programs in the State of Oregon.

ScottishPower and PacifiCorp agree to establish a working group to evaluate specific conservation programs and review existing conservation and low income weatherization tariffs. Applicants further agree to fund conservation programs at a level of \$6 million per year for a period of three years following closing of the merger. A portion of the \$6 million spending commitment will be used to fund the Northwest Energy Efficiency Alliance (NEEA) and low income weatherization. Funding of NEEA will be continued for an additional five years, at a level of \$2 million per year, or PacifiCorp's proportionate share of total NEEA funding, if

⁴ The hearing was postponed by one day from its originally scheduled start date of July 27, 1999. As a result of the stipulations, a number of parties waived cross-examination of each other's witnesses; therefore, the full three days originally scheduled for the hearing were unnecessary. The one-day postponement provided the Commission and the parties with additional opportunity to study the fifth stipulation prior to the hearing.

different. Funding of low income weatherization will be budgeted at a level of not less than \$500,000 per year.

The costs of the conservation program funding are to be recoverable under PacifiCorp's System Benefits Charge (SBC).⁵ The three-year commitment and \$6 million spending level is intended to support conservation programs during the industry's transition toward competitive markets, but the terms of the stipulation will be superseded by any restructuring legislation that subjects PacifiCorp to conservation funding requirements. The stipulation also acknowledges that all conservation programs and tariff revisions require Commission approval prior to implementation.

2. Stipulation Relating to Low Income Customers

This Stipulation was executed on July 13, 1999, between Applicants, Oregon Housing and Community Services Development (OHCSO), Community Action Directors of Oregon (CADO), OECA, CUB, Oregon HEAT, and NWEA.⁶ The purpose of the stipulation is to resolve all issues among the signatory parties relating to the impact of the merger on low income customers.

ScottishPower and PacifiCorp agree to work with the signatory parties and other appropriate partners to identify cost-effective programs that provide sustained benefits to low income customers through reduction of energy usage and improvement in customers' ability to pay current and past electric bills. The stipulation lists a number of elements that will be considered in the process of identifying such programs. The stipulation also provides that Applicants will commit to funding low income initiatives in the State of Oregon with shareholder funds at a level of \$400,000 per year over and above the \$114,000 spent on similar programs in 1998. In addition, the stipulation notes that any programs funded must maximize cost-effectiveness and meet all regulatory and business requirements.

3. Stipulation Relating to Low Income Weatherization

This stipulation was executed on July 13, 1999, between Applicants, OECA, CADO, OHCSO, and NWEA. The purpose of the stipulation is to specify a working process among the signatory parties to develop recommended changes to PacifiCorp's current low income weatherization tariff. The stipulation notes that it addresses separate concerns of OECA,

⁵ The SBC is a non-bypassable charge on distribution services that was included as part of a distribution-only alternative form of regulation (AFOR) approved for PacifiCorp dba Pacific Power and Light Company in Case No. UE 94. See generally *In re the Revised Tariff Schedules in Oregon Filed by PacifiCorp, dba Pacific Power and Light Company*, UE 94 (Phase II), Order No. 98-191 (OPUC May 5, 1998). The charge is intended to recover the costs of Demand Side Management (such as conservation) and to provide incentives for the development of renewable resources.

⁶ Although OHCSO is a signatory party to the Stipulation Relating to Low Income Customers and the Stipulation Relating to Low Income Weatherization, and Oregon HEAT is a signatory party to the Stipulation Relating to Low Income Customers, neither OHCSO nor Oregon HEAT sought to intervene in this proceeding. Thus neither are formally parties in this docket.

enabling it to sign two of the other stipulations, the Stipulation Relating to Conservation Programs and the Stipulation Relating to Low Income Customers.

The stipulation provides that within 60 days after the closing of the merger, PacifiCorp will file a revised low income weatherization tariff that eliminates the \$1,000 funding cap for cost-effective weatherization measures, and allows weatherization under some circumstances in houses that have been previously weatherized. In addition, the stipulation indicates that ScottishPower and PacifiCorp will work with OECA to develop further recommendations for changes to the existing tariff. OECA acknowledges in the stipulation that all changes must be approved by the Commission.

4. Stipulation Relating to Performance Standards and Customer Guarantees

This stipulation was executed on June 15, 1999, between Applicants and Staff. The purpose of the stipulation is to resolve all issues among the signatory parties relating to the network performance standards, customer service performance standards, and customer guarantees proposed in the prefiled testimony of the Applicants.

ScottishPower and PacifiCorp agree to modify PacifiCorp's AFOR (as specified in Attachment A to the stipulation) for the purpose of incorporating the benefits of the Network Performance Standards that were proposed in their prefiled testimony into the framework of the existing AFOR. Certain other standards are withdrawn and not included. Existing Service Quality Measures (SQM)⁷ in the present AFOR will be extended through December 31, 2009. The commitment to achieve a 10 percent improvement in system average interruption duration indices (SAIDI) and system average interruption frequency indices (SAIFI) by 2005 will be taken into account by the Commission in the establishment of Revenue Requirement Reduction (RRR) lines 1 and 2 for the years 2005 through the end of the SQM term. The adjustment of the RRR lines shall separately take into account any long-term improvements that would have been achieved absent the merger. ScottishPower commits to developing improved methods to measure momentary average interruption frequency indices (MAIFI and MAIFIE) for individual customers. A new SQM entitled "Service Restoration Indicator" will be included in the modified AFOR SQMs.

Staff agrees that no modifications are required to ScottishPower's proposed Customer Service Performance Standards 6 and 7. With regard to the Customer Guarantee proposal, Applicants agree to the following: a modification of Customer Guarantee 1 (restoration time); a replacement of Customer Guarantee 5 (responses to customer billing inquiries) and Customer Guarantee 6 (tests of meters and related equipment) with new language; a supplementation of the language in Customer Guarantee 8 (meter accuracy program); and an addition of two conditions involving a review of the guarantees with Staff within two years of

⁷ The SQMs are also part of the distribution-only AFOR approved in Case No. UE 94 (Phase II). They are performance measures for evaluating service quality and include revenue requirement reductions for poor performance.

the closing of the merger, and quarterly reports to the Commission on performance under the guarantees, beginning the first full calendar quarter after the closing of the merger.

5. Stipulation Supporting Approval of Application of ScottishPower and PacifiCorp Under ORS 757.511

This stipulation was executed on July 26, 1999, between Applicants, Staff, and CUB. The purpose of the stipulation is to resolve all outstanding issues among the signatory parties. The stipulation notes that it is designed to be complementary to the other four stipulations, and does not replace or supersede them in any way.

The stipulation contains two attachments, (1) Exhibit 1, which includes a list of 24 merger conditions, and (2) an appendix, which includes a list of ScottishPower's Oregon commitments not otherwise contained in signed stipulations or conditions that are under the umbrella of the Commission's regulatory authority. The stipulation states that the merger conditions in Exhibit 1 should be incorporated in any final Commission order approving the joint application. The merger conditions, in turn, specifically reference two of the other four stipulations, the Stipulation Relating to Conservation Programs, and the Stipulation Relating to Performance Standards and Customer Guarantees, as well as the appendix. The merger conditions contained in Exhibit 1 to the stipulation include provisions as follows:

Merger Credit: Applicants agree to a merger credit for a four-year period beginning in 2001. The credit will be \$9 million for years 2001, 2002, and 2003, and \$12 million for year 2004. An additional credit of \$3 million per year for the same four-year period will be provided to reflect the revenue requirement impact of expenditures necessary to implement the service performance standards and guarantees. This credit, along with the \$9 million for the years 2001 and 2002, cannot be offset or reduced. However, the \$9 million and \$12 million credit for years 2003 and 2004, respectively, may be offset or reduced to the extent that cost reductions related to the merger are reflected in rates. The Commission may require PacifiCorp to file a rate case by March 1, 2004, if the Company's earnings fall outside a zone of reasonableness.

Performance Standards and Customer Guarantees: Applicants agree to implement specific service quality improvements pursuant to the Stipulation Relating to Performance Standards and Customer Guarantees.

Transition Plan: Within six months of the closing of the merger, ScottishPower will file a merger transition plan, which is intended to set forth ScottishPower's plan to transform PacifiCorp's operations, including timelines, actions necessary to implement the merger and realize benefits and cost savings, capital and operating expenditures, and workforce changes.

Conservation: Applicants agree to implement the conservation provisions contained in the Stipulation Relating to Conservation Programs.

Rate Effects of the Merger: Applicants agree to exclude all costs of completing the transaction from PacifiCorp's utility accounts and agree to hold customers harmless from a higher revenue requirement for PacifiCorp than if the merger had not occurred. Rates will also be affected by the merger credit described above.

Financial Issues: Applicants agree that PacifiCorp will maintain a minimum common equity ratio and will not seek a higher cost of capital than it would have been authorized on its own. In addition, Applicants agree to maintain separate debt and preferred stock ratings, and to provide notice of certain distributions from PacifiCorp to ScottishPower.

Affiliated Interest and Cost Allocation Issues: Applicants agree to a number of conditions designed to assure that customers are protected from increased costs related to cost allocations and affiliated interest transactions, including a commitment that PacifiCorp's total corporate costs will not rise as a result of the merger, a waiver of any defense that the Commission's jurisdiction over affiliated interest transactions is preempted by the Public Utility Holding Company Act of 1935 (PUHCA) or *Ohio v. FERC*, and an agreement to maintain an audit trail for cost allocations.

Access to Books and Records: Applicants agree to a number of conditions designed to assure that the Commission has access to information and records, necessary to perform its regulatory oversight role, of both ScottishPower and PacifiCorp.

Enforcement: Condition 24 sets forth a procedure for the enforcement of the merger conditions. If the Commission finds that either ScottishPower or PacifiCorp has violated one or more conditions, it may seek penalties in circuit court pursuant to ORS 756.990.

Other Commitments (Appendix): In addition, Applicants also agree to implement the conditions contained in the appendix to the stipulation. These include a number of commitments pertaining to customer service and the environment.

ScottishPower will develop an improved system of outage reporting for the measurement of network performance standards. Within 120 days of the merger, 80 percent of phone calls to PacifiCorp's business centers will be answered within 30 seconds; by January 1, 2001, 80 percent within 20 seconds; and by January 1, 2002, 80 percent within 10 seconds. Within 90 days of the merger, non-disconnect complaints shall be responded to within 3 business days; disconnect complaints shall be responded to within 4 business hours; and complaints referred by the Commission shall be resolved within 30 days. PacifiCorp will pay a penalty of \$50⁸ if it fails to meet the following customer service guarantees: (1) restoration of power within 24 hours; (2) keeping mutually agreed appointments; (3) activation of power supply within 24 hours when no construction is required and government requirements are met; (4) providing estimates for new power supplies within 5 business days when no network changes are needed, and within 15 business days when network changes are needed; (5) providing customers with

⁸ For guarantees 1 and 5, the penalty is \$100 if the customer is a commercial or industrial customer.

2 days' advance notice for planned power interruptions; and (6) initiating an investigation within 7 days or providing a written explanation within 5 days, for power quality complaints.

Applicants also commit to the development or acquisition of an additional 50 MW of system-wide renewable resources, under certain conditions. The conditions generally involve cost recovery through the SBC in the AFOR. PacifiCorp will also implement a "green resource" tariff,⁹ will contribute \$100,000 in shareholder funds to the Bonneville Environmental Foundation, and will implement environmental management systems.

Positions of the Parties

ICNU

ICNU alleges that ORS 757.511 requires a showing of substantial net benefits, based on the plain language of the statute, which suggests a two-part test: that the merger *serve* the utility's customers *and* that the merger is in the public interest. The word "serve" means "promote the interests of." ICNU submits that this choice of words was a rejection of the more liberal public interest standard for intrastate mergers. ICNU contends that Commission precedent in the Portland General Electric Company/Enron Corp.¹⁰ (PGE/Enron) (Order No. 97-196) and Pacific Power and Light Company/Utah Power and Light Company (Pacific Power/Utah Power) (Order No. 88-767) mergers supports a requirement of net benefits, as both orders relied on the benefits shown to approve the mergers. ICNU maintains that other states have adopted a net benefits test.

According to ICNU, the application does not provide net benefits since the claim of lower rates is unverifiable; there is no showing that merger savings will exceed incremental expenditures following the merger; "gold-plated" service is not a benefit when customers are satisfied with service quality; shareholders might retain cost savings; and the merger poses more risk than the PGE/Enron merger. There will not be net benefits unless the merger conditions are modified. Many of the conditions will require a "but for" analysis in the future that is unworkable.

Condition 3 must be modified to ensure all merger costs are excluded from rates. For example, Applicants characterize the transition plan cost as both a merger benefit and an ordinary cost. This cost should be excluded from rates. ICNU also asserts that Condition 7 should be modified to protect against detrimental merger-related changes in capital costs. To protect against such changes, the Commission should be allowed to use a hypothetical capital structure based on comparable A-rated electric utilities, similar to what was provided in the Utah Stipulation. Condition 10 must contain a firm commitment that rates will not go up as a result of the merger. There is also an incentive for Applicants to assume PacifiCorp would have stood still and not

⁹ A "green resource" tariff allows customers to purchase energy derived from environmentally-friendly resources, often at a cost that is above the cost of energy from other resources.

¹⁰ The merger was between Portland General Corporation (PGC) and Enron. PGE was at the time a wholly-owned subsidiary of PGC.

reduced costs on its own, which ICNU contends is not a reasonable assumption. Customers are not protected against increases in rates because of incremental costs associated with investments in renewables and conservation. The promised 50 MW of renewables is a de facto extension of the AFOR that avoids a normal prudency review. Customers are not protected regarding interjurisdictional cost recovery.

Additionally, ICNU argues that Condition 18 must provide a larger credit to adequately protect customers against merger-related costs and risks. There are several identifiable risks too novel to quantify. The credit is significantly lower than in the PGE/Enron merger, where customers were compensated for PGE's goodwill and expertise. Because the credit does not take effect immediately, ICNU argues it is more likely that the credit will be offset with rate increases. If the reason for the delay is to give the Company time to achieve the cost savings, then the credit only reflects dollars that rightfully belong to customers under traditional ratemaking principles.

Finally, ICNU maintains that the merger conditions also ignore the existence of SB 1149.¹¹ If the Company opposes implementation by filing a legal challenge to SB 1149, it would frustrate the law's purpose. At the hearing Applicants testified that the 50 MW of renewables is in addition to the requirements of SB 1149 and that cost recovery would be sought through rates if not recovered through a systems benefit charge, but this conflicts with SB 1149's requirement that all costs for public purposes be removed from rates. Condition 19 may also conflict with SB 1149's requirement of unbundling by 2001, since a "general rate filing" will be obsolete by 2004.

PacifiCorp, ScottishPower, and Staff

Applicants and Staff disagree on the legal standard. Applicants believe it is "no harm," and Staff believes it is "net benefits." Applicants and Staff submit that the Commission can approve the application without addressing the legal standard, as it did in the PGE/Enron merger case.

Applicants and Staff assert that net benefits will result from the transaction. They summarize the benefits, commitments, and conditions in their joint brief and in their joint testimony in support of the Stipulation Supporting Approval of Application of ScottishPower and PacifiCorp Under ORS 757.511.¹² Any risks associated with the transaction are adequately addressed through conditions or offset with benefits. While the ownership of PacifiCorp would change after the merger, the Company would continue to operate on a stand-alone basis, headquartered in Portland, and the Commission would continue to have a similar degree of regulatory oversight over the Company.

¹¹ SB 1149 is a bill relating to the restructuring of the electric power industry in Oregon. It was signed into law on July 23, 1999, and contains an emergency clause declaring that the Act takes effect upon its passage.

¹² Because the various stipulations have been summarized on pp. 3-8 of this order, no purpose would be served by repeating the summaries of Applicants and Staff.

Applicants and Staff contend that there is no basis for ICNU's first risk, its fear that the merger will lead to increased costs. The merged PacifiCorp will exclude the acquisition premium, will not seek a higher cost of capital, will maintain a minimum equity ratio, will have a separate debt rating, and will provide notice of certain distributions. (Conditions 3, 7, 6, 5, and 9). Conditions 11, 12, 13, 14, 20, and 21 provide safeguards regarding cost allocations and affiliated transactions, while Conditions 1, 2, 4, 8, and 15 provide assurance of access to necessary information. Condition 24 provides a mechanism for expedited enforcement of the Stipulation. ICNU contends that the conditions are unworkable, but it does not explain how these conditions are any more difficult to implement than the ordinary complex and difficult ratemaking principles under which the Commission operates. ICNU's objection would make it impossible for any merger to be approved.

Applicants and Staff characterize ICNU's second risk, that this merger would preclude a merger with a domestic utility from which synergies could be derived, as a concern that a different merger could provide more cost savings. However, the proposed merger must be compared with the status quo and not some hypothetical merger. In addition, a domestic merger would present different risks, such as market power problems.

ICNU's third risk is that ScottishPower might divert money or attention from PacifiCorp by engaging in additional acquisitions or by retracting PacifiCorp's promised autonomy. Applicants and Staff maintain that there is no support in the record for this. To the contrary, ScottishPower views its investments in the long-term. Also, PacifiCorp will be adequately represented on ScottishPower's Board of Directors.

ICNU's fourth risk is that the continuation of PacifiCorp's AFOR could deprive customers of cost decreases that would occur without the merger. Applicants have not proposed any extension of the rate aspects of the AFOR, only a two-year extension of the SQMs and an extension of the SBC and renewables incentive portion of the AFOR, with an increase in the AFOR cap on eligible renewable resources.

ICNU's final risk is that ScottishPower might try to oppose industry restructuring and deregulation efforts, such as SB 1149. Applicants and Staff submit that the evidence is to the contrary. ScottishPower embraced competition in the U.K. and testified that it would comply with the U.S. law. The [fifth] stipulation is not inconsistent with SB 1149. The merger credit provisions anticipate the disaggregation of PacifiCorp's assets, and Conditions 13 and 14 also address the potential development of a competitive market.

Lastly, Applicants and Staff urge the Commission to reject the following six conditions proposed by ICNU for the first time at the hearing because the six conditions either do not address merger-related risks or are unnecessary.

ICNU Condition 1 would require ScottishPower to prepare and file a proposal to implement SB 1149 within certain timeframes. Applicants and Staff maintain that this condition does not address any identified risk. In addition, it would be more appropriate for the Commission to establish a schedule of its own that includes all affected utilities.

ICNU Condition 2 would require ScottishPower to abide by a condition in the Pacific Power/Utah Power merger. ICNU characterizes the condition in the prior Utah Power merger case as a requirement that “Oregon rate payers will be held harmless from the higher costs of Utah Power.” ICNU Exh. 58. Applicants and Staff maintain that this condition is also unnecessary since the Company testified that to the extent there is a condition already in place, it would continue to honor that commitment.

ICNU Condition 3 would require the addition of the language “rates shall not increase as a result of this merger” to Merger Condition 10. Applicants and Staff maintain that the language in Merger Condition 10 is adequate and that the language sought by ICNU was not required in the PGE/Enron merger.

ICNU Condition 4 deals with the sale of power outside PacifiCorp’s service territory and would require related purchase costs and revenues to be excluded from the Company’s results of operations. Applicants and Staff maintain that this condition does not address any identified risk. They also state that Merger Conditions 13 and 14 fully address future competitive issues.

ICNU Condition 5 would require ScottishPower to file its long-term projections of PacifiCorp’s costs absent the merger. Applicants and Staff maintain that this condition is unnecessary because the merger transition plan will provide a useful benchmark, and Applicants bear the burden of proof on this issue.

ICNU Condition 6 would require ScottishPower to file an annual report on the status of the merger conditions. Applicants and Staff maintain that this condition is unnecessary since the Applicants are already required to file a number of reports pursuant to the [fifth] stipulation, the Commission can always request additional information, and Merger Condition 24 provides an effective mechanism for enforcement of the merger conditions.

Vulcan

Vulcan claims that the pledge of 50 MW of renewable resources provides a benefit that would not occur without the merger.¹³ Vulcan further asserts that there are net benefits of \$168.6 million from reduced CO₂ gas emissions if the renewables are located outside Oregon, \$646 million if the renewables are located in Oregon, and \$711 million if the developer is also headquartered in Oregon. There is a risk that the net benefits will be lower if the renewables are located outside Oregon, and there is a risk of self-dealing by the Applicants and affiliates, but these risks are within the power of the Commission to mitigate or eliminate, either now or later.

¹³ Vulcan withdrew its objection to the joint application after Applicants clarified during the course of the hearing that its 50 MW renewables commitment was in addition to any requirements under SB 1149.

*Utility Reform Project (URP) and Daniel Meek*¹⁴

URP and Daniel Meek (collectively URP) argue that the settlement provides no benefits since the Commission could adopt the conditions in the stipulation without the agreement of the Applicants. The only merger condition that *might* provide benefits is the merger credit, but the *assurance* of a credit only totals \$30 million. Merger Condition 19 appears to prevent the Commission from requiring the Company to file a rate case before 2004, which is an unlawful predetermination that current rates will continue to be just and reasonable until 2004. Condition 24 appears to limit the Commission's enforcement powers. There are no benefits to the Conservation Stipulation because the conditions are less stringent and will be superseded by SB 1149, and the Company may be able to influence the recommendations of the working group by dictating the membership of that group.

URP also contends that the renewable resources commitment has no benefit because "all costs are to be paid by ratepayers, and appear to be less than the amounts required under SB 1149 in any event." (Brief of URP and Daniel Meek at 4.) The \$100,000 to Bonneville Environmental Foundation confers a tiny benefit. The Low Income Customers Stipulation provides few benefits because it is heavily conditioned by vague language, and the program to improve customers' ability to pay bills is actually a benefit to the utility itself. The Low Income Weatherization provides no additional funds for weatherization.

*NRDC, CUB, RNP, OECA, CADO, and NWECC*¹⁵

These parties state that the stipulations and other conditions provide a net benefit, although they do not eliminate all risks. Risks can be addressed by working with ScottishPower.

RNP

In addition to the joint brief described above, RNP also filed a separate brief detailing the benefits of renewable resources: renewables have no fuel cost; offer portfolio diversity (energy supply independence); have less volatile operating costs; avoid overbuild; reduce exposure to future environmental control/tax laws; provide economic, employment, and tax benefits, especially in rural areas; and improve regional air quality. RNP supports the stipulations.

Discussion Regarding the Joint Application

The Commission will discuss its findings regarding the joint application based upon the issues presented to the Commission by the parties in the Second Amended Hearing Procedure List.

¹⁴ The Utility Reform Project (URP) and Daniel Meek did not attend the hearing; therefore, it is unclear whether these parties are aware of the clarifications and commitments made during the hearing, or how that might affect their positions.

¹⁵ NWECC's brief was filed separately, but it repeats what was said in the joint brief of NRDC, CUB, RNP, OECA, and CADO.

What does the legal standard require PacifiCorp and ScottishPower to demonstrate in this proceeding to obtain an order approving their application – net benefits or no harm?

Applicants maintain that the applicable legal standard under ORS 757.511 requires a showing of “no harm” to the utility’s customers. In contrast, the other parties, including Staff and ICNU, contend that ORS 757.511 requires a showing of “net benefits” to the utility’s customers. Because Applicants claim that they have met the “higher” standard of demonstrating that net benefits will result from the merger, they have chosen not to brief the issue of the proper interpretation to be given to the legal standard contained in ORS 757.511. Both Applicants and Staff suggest in their joint brief that a resolution of the controlling legal standard is unnecessary and that the Commission can instead make a finding that Applicants have satisfied either interpretation of the standard, much as it did in the PGE/Enron merger, Case No. UM 814, Order No. 97-196.

The Commission observes that ICNU is the only party that briefed the issue of the proper interpretation to be given the legal standard embodied in ORS 757.511. However, it is not necessary for the Commission to rule in this case on what is the applicable legal standard inasmuch as the stipulation, as discussed below, will provide net benefits to PacifiCorp’s customers. Thus, both the “no harm” and “net benefits” standards are met.

Will net benefits result from the proposed transaction?

The Commission finds that net benefits will result from the proposed transaction.¹⁶ Applicants have agreed to provide a merger credit totaling up to \$51 million over a four-year period. Of the \$51 million, up to \$12 million (\$3 million for each of the four years) will be used to fund improvements that will upgrade PacifiCorp’s ability to meet the higher network performance standards and customer service standards promised by ScottishPower. While up to \$21 million (\$9 million for 2003 and \$12 million for 2004) of the \$51 million may be offset or reduced to the extent that cost reductions related to the merger are reflected in rates, this amount still provides a real benefit to customers. Customers would realize the benefits of the \$21 million in one of two ways. This portion of the \$51 million credit might be delivered to customers directly through rates (if cost reductions are not reflected in rates) or indirectly through a new base rate case. If the latter, the credit would be offset, in whole or in part, by merger-related cost savings reflected in the expense component of the revenue/rate base/expense formula used to calculate the Company’s revenue requirement. In turn, this would lead to a

¹⁶ The Commission stresses that its *finding* of net benefits should not be interpreted as a *requirement* that net benefits be shown. The Commission emphasizes this point because ICNU has apparently interpreted the Commission’s past decision in the PGE/Enron merger case as precedent for a requirement of net benefits, even though the Commission specifically found that it did not need to decide the issue of the appropriate standard in that case, simply because the order relied on net benefits to approve the merger. *See In Re the Application of Enron Corp for an Order Authorizing the Exercise of Influence Over Portland General Electric Company*, UM 814, Order No. 97-196 (OPUC June 4, 1997), at 6.

lower revenue requirement than would otherwise be required, which would translate into lower rates. Thus the merger credit assures that the claimed benefits of the merger will be flowed through to customers.

The network performance and customer service improvements will also provide ongoing benefits to customers. The network performance improvements will affect customers' experience of PacifiCorp's distribution service, and the customer service improvements will affect customers' experience of interaction with the Company. For example, as a result of the network improvements, the duration and frequency of interruptions that customers experience should decline. With regard to customer service, the amount of time to answer telephone calls from customers and to resolve customer complaints will be shortened. Applicants will also guarantee payment of a penalty (usually \$50) to individual customers if certain customer service standards are not met.¹⁷ These include the restoration of power supply, keeping appointments, service installation, estimates for installation of new service, responses to bill inquiries, meter testing, planned interruptions, and the handling of power quality complaints.

In addition, the SQMs, as modified by the stipulations, will be extended for a period of two additional years, from January 1, 2008, to December 31, 2009.¹⁸ Moreover, since the network and customer service improvements that Applicants have committed to will be incorporated in PacifiCorp's SQM's, PacifiCorp will risk financial penalties in the form of revenue requirement reductions for non-achievement of those standards. The costs of achieving the network performance standards and customer service standards will be borne by Applicants and not by customers, and benefits will exist even in the event of the disaggregation of PacifiCorp's generation and distribution functions.

Applicants presented evidence that a portion of the proposed network performance measures has a dollar value as high as \$60 million annually system-wide and up to \$600 million on a net present value basis. Staff places less value on these improvements, but does agree that they are beneficial. ICNU challenged the reliability of the studies used by Applicants to calculate the value of the improvements. While the actual dollar value of the service quality improvements is uncertain, the Commission agrees with Staff and the Applicants that they do provide a real benefit to customers. Given the general move toward the restructuring of the electric industry, benefits that target the quality of service received by customers are particularly apropos.

Applicants have also agreed to use shareholder funds to provide an additional \$400,000 in funding for low income initiatives and to contribute \$100,000 to the Bonneville

¹⁷ Condition 16 provides that the customer guarantee payments will not result in a waiver of any other right or claim that the customer might have against PacifiCorp, thus providing some assurance that the Company will not try to use the payments in lieu of making the promised service quality improvements.

¹⁸ The original SQMs in the AFOR are in effect for a period of ten years beginning January 1, 1998, and thus would end by January 1, 2008. Order No. 98-191, Appendix D at 8. The SQMs are independent of the existence of any AFOR plan. Order No. 98-191 at 6. The current AFOR plan ends June 30, 2001. *Id.* at 4.

Environmental Fund. While the funding for low income initiatives is more likely to directly benefit low income customers of PacifiCorp, the funding may also provide indirect benefits to the Company's customers at large, since the initiatives may help reduce the amount of uncollectibles that the Company experiences, which are in turn passed on to customers through rates. This is especially true if Applicants are successful in implementing programs that provide "sustained benefit" to low income customers.

Are there risks associated with the proposed transaction that PacifiCorp and ScottishPower have not addressed with conditions or offset with sufficient benefits?

The Commission has considered the risks associated with the proposed transaction and finds that these risks have been adequately mitigated by the merger conditions. One factor unique to the proposed transaction is that the acquiring company is based in another country. Several risks common to many merger transactions are that important books and records of the regulated company will be kept outside the Commission's jurisdiction, that the Commission will be denied access to important books and records of a parent or affiliate of the regulated company, or that affiliated interest transactions or cost allocations will be conducted in a way that results in a cross-subsidization by the customers of the regulated utility. These risks have the potential to be exacerbated when the acquiring company is based in a foreign country.

In the present case, however, PacifiCorp will operate on a stand-alone basis after the merger, although it will be indirectly wholly owned by ScottishPower. The Commission will continue to have essentially the same regulatory oversight over PacifiCorp that it would have absent the merger. The potential problems regarding access to books and records, and affiliated interest and cost allocation issues, have been adequately addressed in the merger conditions. PacifiCorp will be required to maintain its own accounting system separate from ScottishPower's and will keep all of its financial books and records at its headquarters in Portland, Oregon. The Commission will have access to records of ScottishPower pertaining to transactions between PacifiCorp and all of its affiliated interests, and the Commission will have authority to audit the accounting records of ScottishPower and its unregulated subsidiaries that are the bases for charges to PacifiCorp.

The merger conditions also include a number of provisions designed to prevent subsidization through affiliated interest transactions or cost allocations. Both PacifiCorp and ScottishPower will be required to comply with all Commission requirements regarding affiliated interest transactions, and PacifiCorp will be required to file detailed semi-annual reports regarding such transactions. Applicants' proposed cost allocation methodology will be reviewed, and the final methodology will comply with a number of principles set forth in the [fifth] stipulation, including the requirement that an audit trail be maintained and supported by appropriate documentation. Importantly, ScottishPower and PacifiCorp have agreed to waive in future proceedings any defense they may have that the Commission's jurisdiction over affiliated interest transactions is preempted by the PUHCA or *Ohio v. FERC*. Moreover, ScottishPower has agreed to subject itself to Commission jurisdiction regarding the imposition of penalties for violation of the merger conditions.

In addition, the Merger conditions contain financial protections to guard against increased costs relating to the merger. Applicants have agreed that all costs of completing the merger, including the acquisition premium, will be excluded from PacifiCorp's utility accounts and have agreed to hold customers harmless from a higher revenue requirement for PacifiCorp than if the merger had not occurred. PacifiCorp will be required to maintain a minimum common equity ratio, to maintain separate debt and preferred stock ratings, and to provide notice of certain distributions from PacifiCorp to ScottishPower. PacifiCorp may not seek a higher cost of capital than it would have been authorized absent the merger. The Commission will also have the option of requiring PacifiCorp to file a rate case by March 1, 2004, if the Company's earnings fall outside a zone of reasonableness. Significantly, Applicants clarified at the hearing that they would have the burden of proof with regard to Conditions 3 (exclusion of merger costs), 7 (no higher cost of capital), 10 (no higher revenue requirement), and 19 (Commission-required general rate filing).

Discussion Regarding the Positions of the Parties

These findings address the remaining arguments of the parties not addressed above.

ICNU claims that the proposed merger poses more risk than the PGE/Enron merger, but it does not adequately explain how this is so. It also asserts that the merger credit is less than that promised in the PGE/Enron merger. The Commission finds that a comparison with the Enron merger is not entirely appropriate. First, as pointed out by Staff in its Staff Addendum to Post-Hearing Brief, applications brought under ORS 757.511 must be decided on a case-by-case basis. Second, significant differences exist in some of the risks associated with the Enron merger and the proposed ScottishPower merger. For example, the Enron merger presented potential market power abuse problems, which the present application does not. In contrast, the proposed merger will result in PacifiCorp becoming owned by a company based in a foreign country, which was not the case in the Enron merger. Finally, the revenue requirement reduction associated with merger cost savings is not materially different from the Enron merger.¹⁹

ICNU also has some concerns regarding the efficacy of the merger conditions. In particular, ICNU is skeptical that a future "but for the merger" analysis can work. It appears that ICNU's analytical approach to the "but for" problem would be a requirement that ScottishPower file its long-term projections of PacifiCorp costs that would have occurred without the merger, as suggested in ICNU Condition 5. However, this approach does not solve the problem posed by ICNU. The projections will still be just that – projections of what PacifiCorp might have looked like in the future absent the merger. The Commission concurs that a "but for the merger" analysis can be difficult but observes that the instances in which such an analysis would most likely prove useful – the exclusion of merger costs, no higher cost of capital, no higher revenue requirement – involve the very issues upon which the Applicants have agreed to undertake the burden of proof. The risk is squarely on the Applicants in these circumstances. If ICNU's

¹⁹ Staff's Addendum indicates that in ScottishPower the approximate annual average merger cost savings is 1.7 percent over four years, while in Enron the approximate annual average was 1.0 percent.

argument is taken to its logical extension, no merger could ever be approved, since all mergers involve a certain level of uncertainty regarding a comparison of the status quo with the effect of the merger.

Nothing in the stipulations would prevent the Commission from using a hypothetical capital structure based upon comparable A-rated electric utilities to determine whether PacifiCorp is seeking a higher cost of capital than it would otherwise have been authorized. Therefore, ICNU's suggestion that such a condition be added to the Merger conditions is unnecessary. The Commission takes no position whether the use of such a hypothetical capital structure is appropriate; it only notes that nothing in this case would prevent its use.

ICNU also expresses concern that Applicants will have an incentive to assume that PacifiCorp would have stood still and not taken action on its own, absent the merger. However, it is clear that this concern was taken into consideration in drafting the various stipulations. For example, the Stipulation Relating to Performance Standards and Customer Guarantees specifically states, "The adjustment of the RRR [Revenue Requirement Reduction] lines shall also separately take into account any long-term improvements that would have been achieved absent the merger." Likewise, the appendix to the Stipulation Supporting Approval of Application of ScottishPower and PacifiCorp Under ORS 757.511 indicates that ScottishPower will commit to a review of its network performance standards to assess whether the standards are providing additional benefits to customers beyond that which would have been accomplished through pre-merger programs.

ICNU also contends that the merger conditions ignore the existence of SB 1149. The testimony at the hearing indicated that some of Applicants' commitments, such as the commitment to install 50 MW of renewable resources, were made before SB 1149 was even on the Senate Floor. Other testimony indicated that a close study of the stipulations and SB 1149 had not been made to check for consistency. However, the witnesses repeatedly testified that Applicants will follow the law, and that to the extent inconsistencies exist, the law will control and supersede the stipulations. The Commission agrees that the law controls, and thus finds that there is no need to reject the stipulations on the basis of possible inconsistencies with SB 1149.

In support of its general contention that inconsistencies may exist between the merger conditions and SB 1149, ICNU points out that the promised 50 MW of renewables may conflict with a provision in SB 1149 that requires public purpose costs (which includes new renewable energy resources) to be removed from rates. At the hearing, Applicants pointed out that the exception to the "hold harmless" provision in Condition 10 for renewables and conservation is conditioned upon the investments being cost-effective and subsequently approved by the Commission. More specifically with regard to the 50 MW renewables commitment, Applicants testified that there might be stranded cost exposure associated with the 50 MW of renewables as a result of electric restructuring; and thus, Applicants would want some assurance of cost recovery in order to proceed with that commitment. Applicants further indicated that they would not go forward with the investment if the Commission did not agree to cost recovery.

The Commission has reviewed SB 1149 and finds that it may complicate cost recovery for the promised 50 MW of renewables. The Act defines “new renewable energy resource” as a renewable energy resource project, or a new addition to an existing project, or the electricity produced by a project, “that is not in operation on the effective date of this 1999 Act.” Or Laws 1999, ch 865, § 1(21). The Act contains an emergency clause, and took effect on July 23, 1999. *See* Or Laws 1999, ch 865, § 46. SB 1149 further states that “[t]he commission shall remove from the rates of each electric company any costs for public purposes described in subsection (1) of this section that are included in rates. A rate adjustment under this paragraph shall be effective on the date that the electric company begins collecting public purpose charges.” Or Laws 1999, ch 865, § 3(3)(g). The collection of the public purpose charge is to commence “[b]eginning on the date an electric company offers direct access to its retail electricity consumers.” Or Laws 1999, ch 865, § 3(2)(a). One of the specified purposes for which the public purpose charge must be used is to fund “the above-market costs of new renewable energy resources.” Or Laws 1999, ch 865, § 3(1) and § 3(3)(b)(B).

Thus it would seem that it is at least arguable whether SB 1149 may prohibit the Commission from adding into rates cost recovery for any of the specified public purposes, such as the above-market costs of new renewable energy resources. As a result, the Commission is uncertain whether it will be able to allow cost recovery for Oregon’s share of the above-market cost of the 50 MW of renewables. The Commission also has concerns that the addition of renewable resources outside of the public purpose charge funding may result in stranded costs.²⁰

As previously noted, the 50 MW renewables commitment was made prior to enactment of SB 1149, Applicants did not do a comprehensive comparison of SB 1149 with the stipulations, and there may be inconsistencies with SB 1149. There is uncertainty over cost recovery, and there is uncertainty concerning whether it is in the public interest to approve the 50 MW of renewables over and above what would be required by SB 1149, given the potential for stranded costs. As a result, the Commission finds that the oral clarification made at the hearing – that the promised 50 MW of renewable energy was intended to be in addition to what would be required by SB 1149 – should be conditioned upon the following: (a) that the renewables are not inconsistent with SB 1149; (b) that they do not create stranded costs; (c) that they are cost-effective; and (d) they are approved by the Commission.

In addition, ICNU questions the efficacy of Condition 19, stating that a general rate filing may be obsolete by 2004. One of Staff’s witnesses explained at the hearing that the general rate filing contemplated by Condition 19 would include everything that is then regulated by the Commission. While the components of a general rate filing may change, the Commission finds that such a rate filing is not likely to become obsolete by 2004.

With regard to ICNU’s concern about whether the costs of the merger transition plan would be excluded from rates, the Commission finds that there may have been some

²⁰ The Act uses the terms “transition charge” and “transition credit” to refer to concepts that are commonly known in the industry as “stranded costs” and “stranded benefits.” *See* Or Laws 1999, ch 865, § 1(32) and (33).

confusion at the hearing concerning what matters would be addressed in the merger transition plan. This confusion may explain why the plan's costs were characterized in different ways. Applicants specifically testified that if there are costs related to the merger transition plan that would not have occurred under normal business practices but were incurred solely because of the merger, those costs would be excluded. Applicants further testified that to the extent net benefits are derived from the merger transition plan, the costs associated with providing the net benefits will be included in rates. To the extent there are no net benefits, the associated costs will be excluded. The Commission finds that a determination of whether some or all of the costs relating to the merger transition plan should be excluded can be made after the plan has been filed with the Commission. The Commission notes that Applicants have undertaken the burden of proof to show that all costs of completing the merger have been excluded from PacifiCorp's utility accounts.

Finally, the Commission has reviewed the six conditions proposed by ICNU at the hearing along with the responses of Applicants and Staff to those proposals. The Commission concurs with Applicants and Staff and finds that none of the six proposed conditions are necessary to find that the proposed merger will serve PacifiCorp's customers in the public interest.

URP's concern that Condition 19 might prevent the Commission from requiring PacifiCorp to file a rate case before 2004 is unfounded. This condition was discussed and clarified at the hearing. Nothing in Condition 19 prevents the Company from filing a rate case prior to 2004, nor does it prevent the Commission from undertaking an overearnings investigation prior to 2004. What it does provide is that the Commission can require PacifiCorp to file a rate case by March 1, 2004, if the Company's earnings fall outside a zone of reasonableness and that the Company will have the burden of proof in that rate case. This is in contrast to an overearnings investigation, where the burden of proof would rest on the Commission Staff or any party initiating the investigation. This provision is designed to ensure that cost savings are flowed through to customers.

URP's argument that the settlement provides no benefits because the Commission could have adopted the conditions in the [fifth] stipulation without the agreement of the Applicants is specious. Even assuming the correctness of URP's premise – that the Commission has the authority to order *all* of the conditions agreed to by the Applicants – this does not mean there are no net benefits. The benefits derive from the merger, not the Commission's power to impose conditions. In addition, such a rationale has the counter-productive effect of discouraging utility companies from entering into settlement negotiations in the future.

Condition 24, contrary to URP's contention, actually broadens rather than limits the Commission's enforcement authority. It ensures that the Commission can seek penalties directly against ScottishPower as well as PacifiCorp,²¹ thus waiving any defense ScottishPower

²¹ Condition 24 provides that the Commission could choose to seek penalties against PacifiCorp or ScottishPower but would only seek penalties against one of the two companies for the same violation.

may have regarding the Commission's personal or subject matter jurisdiction over ScottishPower to seek penalties for violation of the merger conditions.

In summary, the Commission finds that approval of the merger as modified by the stipulations²² will not harm PacifiCorp's customers, will not result in the degradation of PacifiCorp's service, will not result in higher rates to PacifiCorp's customers, will not weaken PacifiCorp's financial structure, and will not diminish PacifiCorp's utility assets. The Commission further finds that the joint application, as modified by the stipulations, provides net benefits to customers and will serve PacifiCorp's customers in the public interest.

CONCLUSIONS OF LAW

The Public Utility Commission of Oregon has arrived at the following conclusions of law.

PacifiCorp, through its operating subsidiary Pacific Power and Light Company, is engaged in the provision of electric power to customers in portions of Oregon, and as such, is a public utility pursuant to ORS 757.005(1)(a)(A). The Commission has jurisdiction over PacifiCorp pursuant to ORS chapters 756, 757, and 758. ScottishPower is a public limited company registered in Scotland, with multi-utility businesses located in the United Kingdom, and will be in a position to exercise substantial influence over the policies and actions of PacifiCorp as a result of the merger. After consummation of the merger between PacifiCorp and ScottishPower, PacifiCorp will become an indirectly wholly-owned subsidiary of ScottishPower, and as such, an affiliated interest relationship will exist between the two companies, as defined in ORS 757.015.

Based upon its findings of fact, the Commission concludes that the five stipulations executed between PacifiCorp, ScottishPower, and the various signatory parties, should be approved.²³ The Commission concludes that the proposed merger, as modified by the stipulations, along with the merger conditions contained therein, will serve PacifiCorp's customers in the public interest, as required by ORS 757.511. The Commission further concludes that because the proposed merger as modified meets the requirements of ORS 757.511, PacifiCorp should be authorized to issue common stock incidental to the proposed transaction, pursuant to ORS 757.410 and 757.415.

²² This finding is subject to the Commission's conditions upon the oral clarification of Applicants' 50 MW renewable resources commitment, discussed *infra*.

²³ This conclusion is subject to the Commission's conditions upon the oral clarification of Applicants' 50 MW renewable resources commitment, discussed *infra*.

ORDER

IT IS ORDERED that:

1. The Stipulation Relating to Conservation Programs, filed on July 14, 1999, is adopted by the Commission and incorporated by reference in this order.
2. The Stipulation Relating to Low Income Customers, filed on July 14, 1999, is adopted by the Commission and incorporated by reference in this order.
3. The Stipulation Relating to Low Income Weatherization, filed on July 14, 1999, is adopted by the Commission and incorporated by reference in this order.
4. The Stipulation Relating to Performance Standards and Customer Guarantees, filed on July 22, 1999, is adopted by the Commission and incorporated by reference in this order.
5. The Stipulation Supporting Approval of Application of ScottishPower and PacifiCorp Under ORS 757.511, filed on July 27, 1999, is adopted by the Commission and incorporated by reference in this order, subject to the conditions contained in the body of this order.
6. The joint application of PacifiCorp and Scottish Power plc for a Commission order authorizing Scottish Power plc to exercise substantial influence over the policies and actions of PacifiCorp, pursuant to ORS 757.511, is granted.
7. The joint application of PacifiCorp and Scottish Power plc for a Commission order authorizing the issuance of PacifiCorp common stock incidental to the proposed transaction, pursuant to ORS 757.410 and 757.415, is granted.
8. The grant of the joint application in Ordering Paragraphs 6 and 7 above is subject to the merger conditions contained in Exhibit 1 appended to the Stipulation Supporting Approval of Application of ScottishPower and PacifiCorp Under ORS 757.511, filed on July 27, 1999.

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9. Nothing in this order shall be considered a finding by the Commission of the value for ratemaking purposes of any of the commitments made by PacifiCorp or Scottish Power plc, including spending commitments for which recovery is expected under PacifiCorp's System Benefits Charge, or as an acquiescence in the value placed upon such commitments by any of the parties to this proceeding. Furthermore, the Commission reserves the right to consider the ratemaking treatment to be afforded in any later proceeding.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements of OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070. A party may appeal this order to a court pursuant to ORS 756.580.