

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of)	
)	
PACIFICORP AND)	
SCOTTISH POWER PLC)	
)	
for an Order (1) Disclaiming)	
Jurisdiction or, in the Alternative,)	DOCKET NO. UE-981627
Authorizing the Acquisition of Control)	
of PacifiCorp by ScottishPower and)	
(2) Affirming Compliance with RCW)	FIFTH SUPPLEMENTAL ORDER
80.08.040 for PacifiCorp's Issuance of)	ACCEPTING STIPULATIONS,
Stock in Connection with the)	APPROVING TRANSACTION, AND
Transaction.)	GRANTING SECURITIES ISSUANCE
)	EXEMPTION.
.....)	

SUMMARY

NATURE OF PROCEEDINGS: This proceeding concerns an application by PacifiCorp and Scottish Power PLC (Joint Applicants) for authority to effect their December 6, 1998 *Agreement and Plan of Merger*, as amended on January 29, 1999, and February 9, 1999, and amended and restated as of February 23, 1999. Joint Applicants, Commission Staff, Public Counsel, and the Northwest Energy Coalition reached resolution of the issues as set forth in two stipulations. These parties ask the Commission to approve the transaction subject to the conditions in the stipulations. Industrial Customers of Northwest Utilities oppose the transaction. Avista Corporation, Washington State Labor Council, AFL-CIO, and International Brotherhood of Electrical Workers do not oppose the transaction, but are not signatories to the stipulations. Joint Applicants no longer request the Commission to confirm PacifiCorp's compliance with RCW 80.08.040. Instead, Joint Applicants request that the Commission exempt the securities issuance from the provisions of Chapter 80.08 RCW pursuant to RCW 80.08.047.

PARTIES: James M. Van Nostrand, attorney, Perkins Coie LLP, Bellevue, Washington, represents Scottish Power PLC (ScottishPower). George M. Galloway, attorney, Stoel Rives LLP, Portland, Oregon, represents PacifiCorp. Robert Cedarbaum, Assistant Attorney General, Olympia, Washington, represents Commission Staff (Staff). Simon ffitich, Assistant Attorney General, Seattle, Washington, represents Public Counsel. Melinda J. Davison, attorney, Duncan, Weinberg, Genzer & Pembroke, P.C., Portland, Oregon, represents Industrial Customers of Northwest Utilities (ICNU). Danielle Dixon, Seattle, Washington, represents Northwest Energy

Coalition (NWECA). Jim Tusler, Seattle, Washington, represents Washington State Labor Council, AFL-CIO (WSLC). William D. Miller, Jr., Business Manager, International Brotherhood of Electrical Workers (IBEW) Local 125, represents his organization *pro se*. Thomas D. Dukich, Manager, Rates and Tariff Administration, Avista Corporation, Spokane, Washington, represents his company *pro se*.

COMMISSION: The Commission accepts the stipulations as clarified in this Order and grants the application subject to the terms and conditions set forth in the stipulations. The Commission grants Joint Applicants request for an exemption of PacifiCorp's securities issuance from the provisions of Chapter 80.08 RCW pursuant to RCW 80.08.047.

MEMORANDUM

I. BACKGROUND

A. Procedural History

On December 31, 1998, Joint Applicants filed an application requesting that the Commission issue an order (1) disclaiming jurisdiction over the transaction or, in the alternative, authorizing the proposed acquisition of control of PacifiCorp by ScottishPower and (2) affirming that PacifiCorp has, through this application, complied with the requirements of RCW 80.08.040 with respect to the issuance of its common stock incidental to the proposed transaction.

On February 8, 1999, Administrative Law Judges (ALJs) Dennis J. Moss and Karen Caillé conducted a prehearing conference. Pursuant to the Commission's notice of prehearing conference, Joint Applicants submitted their legal memorandum on jurisdictional issues. The ALJs set a schedule for responses to the jurisdictional issue and identification of issues and scheduled a second prehearing conference to discuss the scope of issues with the Commissioners and the parties of record.

On March 16, 1999, the Commission issued its Second Supplemental Order, concluding that the Commission's jurisdiction encompasses the proposed transaction between PacifiCorp and ScottishPower under Chapter 80.12 RCW and Chapter 80.01 RCW, in order to protect the public interest.

On March 18, 1999, the Commission convened a second prehearing conference before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner William Gillis, and ALJs Dennis J. Moss and Karen Caillé. The parties were given an opportunity to articulate reasons why the Commission should or should not consider particular issues or subject matter, and to discuss the scope and manner by which the issues they identified may be considered. The issues previously identified

by the parties and described in their written submissions were discussed, and the Commission gave the parties an opportunity to identify additional issues.

On April 2, 1999, the Commission issued its Third Supplemental Order which set the standard for review of the transaction under RCW 80.12.020 and defined the scope of the issues to be addressed in this proceeding. The Third Supplemental Order also advised that Joint Applicants had provided insufficient information to support the request for an order affirming compliance with RCW 80.08.040.

On April 23, 1999, Joint Applicants submitted their prefiled direct testimony. On June 15, 1999, Commission Staff, Public Counsel, NWECA, and ICNU submitted prefiled direct testimony. A stipulation between Joint Applicants and Commission Staff, dated June 10, 1999, accompanied Staff's testimony, identified as Exhibit 44, DEK - 1. On July 2, 1999, Joint Applicants submitted their prefiled rebuttal testimony.

Following the completion of evidentiary hearings in other states, Joint Applicants met with Staff and discussed possible modifications to the June 10, 1999 Stipulation to include commitments, as appropriate, proffered by Joint Applicants in their merger proceedings in other states. Staff and Joint Applicants determined that it would be appropriate to amend the June 10 Stipulation to include several additional provisions. Joint Applicants also engaged in discussions with Public Counsel to discuss the proposed transaction and resolve outstanding issues. These parties were able to agree upon terms that resolve the issues between Joint Applicants and Public Counsel. Commission Staff, Public Counsel, and Joint Applicants memorialized their agreements in a Stipulation filed on August 13, 1999. This Stipulation supersedes the June 10 Stipulation. Joint Applicants, Public Counsel, the Energy Project, and NWECA also entered into a stipulation which resolves all issues in this proceeding relating to the impact of the proposed transaction on low-income customers.

On August 12, 1999, ALJs Dennis J. Moss and Karen Caillé convened a prehearing conference to determine the order of the parties' presentations and witnesses, the time estimates for cross-examination, and identifying and exchanging cross-examination exhibits in anticipation of the evidentiary hearings on August 17-20, 1999. Joint Applicants, Staff, Public Counsel, and NWECA advised the ALJs of the progress of soon-to-be-filed stipulations. In light of the stipulations, Public Counsel and NWECA decided not to present their prefiled testimony. The parties agreed that the prefiled testimony of Joint Applicants, Commission Staff, and ICNU, and the proposed cross-examination exhibits of Joint Applicants and ICNU would comprise a stipulated record. All parties agreed that there would be no cross-examination of the panels supporting the stipulations, only questioning by the Commissioners and ALJs.

On August 19, 1999, the Commission held a hearing before Chairwoman Showalter, Commissioner Hemstad, Commissioner Gillis, and the ALJs for presentation of the two stipulations and questioning by the Bench. The parties stipulated to the

admission of Joint Applicants' prefiled testimony and exhibits for Allen V. Richardson, Richard T. O'Brien, Jack Kelly, Robin MacLaren, Graham L. Morris (sponsoring the exhibits of Robert D. Green), Bob Moir, and Andrew MacRitchie. Likewise, the parties stipulated to the admission of Commission Staff's prefiled testimony and exhibits for Douglas Kilpatrick and Thomas E. Schooley, and ICNU's prefiled testimony and exhibits for Lincoln Wolverton. Additionally, the parties stipulated to the admission of the proposed cross-examination exhibits of Joint Applicants and ICNU.

A four-member panel including Matthew Wright, ScottishPower merger team member, Bruce Hellebuyck, policy director for PacifiCorp, Matthew Steuerwalt, Public Counsel's telecommunications and energy policy analyst, and Douglas Kilpatrick, Commission Staff's electric industry coordinator, testified in support of the Stipulation among Joint Applicants, Public Counsel, and Commission Staff. A three-member panel including Mike Marron, ScottishPower merger team member, Nancy Hirsch, policy director for the NVEC, and Matthew Steuerwalt testified in support of the Stipulation among Joint Applicants, Public Counsel, NVEC, and the Energy Project. Commission Staff witness Douglas Kilpatrick explained why Staff did not sign on to the second stipulation. Following the panel discussions, the Bench heard closing statements from counsel representing ICNU, Public Counsel, Commission Staff, ScottishPower, and PacifiCorp. The Commission determined that briefing was unnecessary.

On August 23, 1999, the Commission held a public meeting in Yakima, Washington, with Chairwoman Showalter, Commissioner Hemstad, Commissioner Gillis, ALJ Dennis Moss, and a representative of Public Counsel. Twenty-two people attended the meeting. Eight public witnesses testified, including several community leaders. In addition to the members of the public who testified at the public hearing, several others wrote letters in which they expressed their views. Exhibit 84 contains the letters submitted by the public.

On August 31, 1999, Joint Applicants, Commission Staff, and Public Counsel filed a modified version of the August 13, 1999 Stipulation, intended to replace the original August 13 Stipulation. The August 31 Stipulation responds to the Commission's request at the August 19 hearing, for further clarification of certain paragraphs of the August 13 Stipulation.

On September 2, 1999, Joint Applicants filed supplemental information to support an Order affirming compliance with RCW 80.08.040. On September 9, 1999, the Commission notified Joint Applicants that the supplemental filing did not meet the statutory requirements for a Commission order as originally requested by Joint Applicants. On September 15, 1999, Joint Applicants submitted a letter requesting that the Commission exempt the securities issuance from the provisions of Chapter 80.08 RCW pursuant to RCW 80.08.047.

B. The Joint Application

The Joint Application of PacifiCorp and ScottishPower alleges that the proposed transaction will serve the public interest. The Joint Application asserts that the combination of PacifiCorp and ScottishPower will result in a financially stronger company than PacifiCorp standing alone. It will provide high-quality customer service through the implementation of customer service standards and guarantees. It will also provide continued commitment to the community, to the environment, and to the welfare of employees. In time, the efficiencies to be gained from the transaction will lead to customer prices that are lower than they would be without the transaction. Joint Application at 3.

Overall, Joint Applicants contend that the transaction will consolidate the best practices of ScottishPower and PacifiCorp, sharpen the focus on local distribution services and local issues, and enable PacifiCorp to provide a higher level of service. Furthermore, the Commission will continue to exercise its regulatory authority over PacifiCorp, thus ensuring continued protection of the interests of Washington customers. *Id.* at 3, 21.

The proposed transaction is set out in detail in the *Agreement and Plan of Merger* dated December 6, 1998 (Agreement), attached to the Joint Application, and in the *Amended and Restated Agreement and Plan of Merger* dated February 23, 1999 (Amended Agreement), included with the Amendment to Joint Application. The purpose of the Amended Agreement is to reflect ScottishPower's decision to create a new holding company for ScottishPower and its subsidiaries. Under the Amended Agreement, Merger Sub, an indirect, wholly-owned subsidiary of the new holding company (Holdco), will merge with and into PacifiCorp, with PacifiCorp continuing in existence as the surviving corporation. The merger is illustrated in Appendix 4-A to the Joint Application. The corporate headquarters and principal executive offices will be in Portland, Oregon. (Ex. T-11, pp. 2-3)

Outstanding PacifiCorp common stock will be exchanged, at the option of the holder, for either Holdco American Depository shares (each such ADR share representing four Holdco ordinary shares) or Holdco ordinary shares. ADRs trade on the New York Stock Exchange and pay dividends converted to dollars. Holdco ordinary shares will trade on the London Stock Exchange and pay dividends in pounds sterling. As a consequence of the transaction, Holdco will indirectly own all of the outstanding common stock of PacifiCorp. However, following the transaction, the existing stockholders of PacifiCorp will control approximately 36% of the common stock of Holdco. *Id.* at 3.

To accomplish the transaction, PacifiCorp will issue new common stock to facilitate the merger of Merger Sub with and into PacifiCorp. Under the Amended Agreement, on the closing of the merger all shares of PacifiCorp common stock will be canceled and retired, and PacifiCorp will issue new common stock to an entity wholly-owned by Holdco. PacifiCorp will thereafter continue to exist as an indirect, wholly-owned subsidiary of Holdco and will be an affiliate of ScottishPower. *Id.*

II. APPLICABLE RULES AND STATUTES

The following statutes and rules are referenced in this Order.

RCW 80.01.040 General powers and duties of commission. The utilities and transportation commission shall: . . . (3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to, electrical companies, gas companies, irrigation companies, telecommunications companies, and water companies.

RCW 80.12.020 Order required to sell, merge, etc. No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it so to do

WAC 480-143-170 Application in the public interest. If, upon the examination of any application and accompanying exhibits, or upon a hearing concerning the same, the commission finds the proposed transaction is not consistent with the public interest, it shall deny the application. [Note: this section was formerly WAC 480-143-050].

RCW 80.28.090 Unreasonable preference prohibited. No gas company, electrical company or water company shall make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

RCW 80.28.100 Rate discrimination prohibited---Exception. No gas company, electrical company or water company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity or water, or for any service rendered or to be rendered, or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

WAC 480-80-335 Special contracts for electric, water, and natural gas utilities. . . . (5) Each contract filed for commission approval shall be accompanied by such documentation as may be necessary to show that the contract does not result in discrimination between customers receiving like and contemporaneous service under substantially similar circumstances and provides for the recovery of all costs as associated with the provision of the service. . . .

RCW 80.08.040 Prior to issuance – Filing required--Contents--Request for order establishing compliance. Any public service company that undertakes to issue stocks, stock certificates, other evidence of interest or ownership, bonds, notes, or other evidences of indebtedness shall file with the commission before such issuance:

(1) A description of the purposes for which the issuance is made, including a certification by an officer authorized to do so that the proceeds from any such financing is for one or more of the purposes allowed by this chapter;

(2) A description of the proposed issuance including the terms of financing; and

(3) A statement as to why the transaction is in the public interest.

(4) Any public service company undertaking an issuance and making a filing in conformance with this section may at any time of such filing request the commission to enter a written order that such company has complied with the requirements of this section. The commission shall enter such written order after such company has provided all information and statements required by subsections (1), (2), and (3) of this section.

RCW 80.08.047 Commission may exempt certain issuances – Order or rule--Public interest. The commission may from time to time by order or rule, and subject to such terms and conditions as may be prescribed in the order or rule, exempt any security or any class of securities for which a filing is required under this chapter or any electrical or natural gas company from the provisions of this chapter if it finds that the application of this chapter to such security, class of securities, electrical or natural gas company, or class of electrical or natural gas company is not required by the public interest.

III. STANDARD FOR APPROVAL OF TRANSACTION

In the Third Supplemental Order in this proceeding, the Commission set forth the standard for approval of the proposed transaction. The Commission referenced the public interest standard in WAC 480-143-050, now WAC 480-143-170, as fundamental to its review of the transaction under RCW 80.12.020 and stated:

The standard in our rule does not require the Applicants to show that customers, or the public generally, will be made better off if the

transaction is approved and goes forward. In our view, Applicants' initial burden is satisfied if they at least demonstrate no harm to the public interest. . . . We recognize from a review of these Orders that the approach for determining what is in the public interest varies with the form of the transaction and the attending circumstances.

Third Supplemental Order on Prehearing Conference, Docket No. UE-981627, In Re PacifiCorp and Scottish Power PLC, (April 2, 1999) at 2-3. We also noted that we would look at ScottishPower's financial and managerial fitness to take over PacifiCorp's operations and its ability to run those operations. Id. at 3. Joint Applicants presented evidence on financial and managerial fitness, plans for service quality, and access to records necessary for regulating oversight.

IV. ISSUES PRESENTED

- A. Should the Commission accept the stipulations and approve the transaction as consistent with the public interest?
- B. Should the Commission exempt Joint Applicants' securities issuance under RCW 80.08.047?

V. DISCUSSION

- A. Should the Commission accept the stipulations and approve the transaction as consistent with the public interest?**

A copy of the Stipulation among Joint Applicants, Commission Staff and Public Counsel is attached as Attachment A (Main Stipulation). A copy of the *Stipulation and Settlement of Issues Related to Low-Income Customers* among Joint Applicants, Public Counsel, NVEC, and the Energy Project is attached as Attachment B (Low-Income Stipulation).

1. Summary of Main Stipulation.

Joint Applicants, Commission Staff, and Public Counsel stipulate that the transaction is consistent with the public interest if conditioned on the terms and conditions set forth in the Main Stipulation. The Main Stipulation consists of forty-six terms and conditions and an appendix addressing ScottishPower's commitments to Washington customers. A summary of the major terms and conditions follows.

Paragraph one of the Main Stipulation memorializes Joint Applicants promise to abide by all commitments and conditions set forth in Appendix A to the Main Stipulation. Appendix A to the Main Stipulation is entitled "ScottishPower's

Commitments to Washington Customers Contained In Direct and Rebuttal Testimony Not Otherwise Covered By Stipulation.” Appendix A sets forth:

- Network Performance Standards including a \$1 payment to every Washington PacifiCorp customer if the merged entity fails to achieve these standards in five years;
- Customer Service Performance Standards;
- Customer Service Guarantees, including payments to customers for failure to meet specific guarantees;
- Commitments on Access to Books and Records;
- Commitments to the Environment, including renewable resources;
- Commitments to the Communities; and
- Commitments to Employees.

Paragraph four of the Main Stipulation provides an annual merger credit of \$3 million per year for four years. This merger credit will be allocated among PacifiCorp’s retail tariff customers (excluding customers served under special contracts) on the basis of a uniform percentage of the customer bill, exclusive of taxes.

Paragraph five promises that PacifiCorp will fund the estimated \$55 million in network expenditures required to implement the service standards commitments in ScottishPower’s direct testimony from efficiency savings and redirected internal funding.

Paragraph six provides that all transaction costs associated with this merger and the premium paid by ScottishPower for PacifiCorp will be excluded from all future ratemaking treatment in Washington.¹

Paragraph nine commits Joint Applicants to providing a merger transition plan within six months of the closing date of the merger.

Paragraph ten commits Joint Applicants to work together with Commission Staff and Public Counsel to establish the baselines related to network performance

¹ Not every paragraph of the Main Stipulation is discussed in the summary, thus accounting for the omission of paragraphs 7, 8, 11-12, 15-17, and 20-46 in the summary. The summary is intended to offer a broad overview of the major terms and conditions reflected in the Main Stipulation. The Main Stipulation, with complete terms and conditions, is appended to the order as Attachment A.

standards and to file the agreed baselines with the Commission. If the parties fail to agree on appropriate baselines, Joint Applicants must file their proposed baselines with the Commission. Staff, Public Counsel, and other interested parties will be given an opportunity to comment on such filings. Joint Applicants agree to abide by the Commission's decision regarding the appropriate baselines.

Paragraph thirteen provides that the level of customer complaints will be reviewed by the Joint Applicants, Staff, and Public Counsel two years following completion of the transaction to determine if the implementation of service quality improvements reduces the number of customer complaints.

Paragraph fourteen provides that Joint Applicants, Staff, and Public Counsel will work together to develop an effective education program regarding the customer guarantees. The purpose of the program will be to educate customers about their rights under the guarantees, and the steps required to claim any payment due based on lack of performance by the company.

Paragraph eighteen commits Joint Applicants to making semi-annual reports to the Commission, Staff, and Public Counsel regarding performance in Washington against the network performance benchmarks set forth in ScottishPower's testimony. Reports on customer service performance standards and customer guarantees, will be provided quarterly.

Paragraph nineteen provides that the network performance standards, customer service performance standards, and customer guarantees will be reviewed after two years of experience in Washington to see if any modifications need to be made to better maintain or improve network reliability, network safety, and customer service and satisfaction.

2. Summary of Low-Income Stipulation.

Joint Applicants, Public Counsel, the Energy Project, and NWEAC agree that the low-income commitments in this stipulation are beneficial to PacifiCorp's Washington customers and that the proposed transaction is in the public interest in respect of these matters. A summary of the major commitments follows.

Joint Applicants commit to working with Public Counsel, the Energy Project, NWEAC, and other stakeholders to implement programs that incorporate a range of measures including: energy efficiency advice, budget management and debt counseling, implementation of energy efficiency measures, and bill payment assistance. Implementation of suitable programs will begin within six months of completion of the merger.

Joint Applicants will make available \$300,000 per annum of shareholder funds for implementation of bill payment assistance and energy efficiency programs

that have been identified, developed, and financially structured to ensure they are cost-effective and meet all regulatory and business requirements. The funding will continue in Washington for three years after approval of the merger. Thereafter, the funding and programs will be reviewed by the parties to this stipulation to determine the appropriate level of funding going forward.

In addition to the \$300,000 per annum identified above, Joint Applicants will maintain the PacifiCorp Washington Low Income Weatherization annual budget at least at the 1999 level of \$560,000 for a three year period following closure of the merger.

Joint Applicants will file with the Commission, within 60 days after the closing of the merger, a revised tariff schedule that eliminates the \$1,350 funding cap for weatherization measures determined to be cost effective by a Department of Energy approved weatherization audit.

3. ICNU's Opposition to the Proposed Transaction

ICNU is the only party that opposes the transaction. ICNU's arguments in opposition to the proposed transaction are contained in the testimony and accompanying exhibits of Lincoln Wolverton (Ex. T-47 through 60), ICNU's cross-examination exhibits (Ex. 61 through 81), and the closing statement of ICNU's counsel at the hearing on August 19, 1999. (TR. pp. 302-318, 324-325). In general, ICNU argues that Joint Applicants have not demonstrated that the proposed transaction will not harm customers. Specifically, ICNU contends that Joint Applicants have not shown that the customer benefits associated with the transaction proposal will offset the customers' costs and risks.

ICNU also raises a legal issue in connection with the Main Stipulation. ICNU's counsel argued in her closing statement that the exclusion of special contract customers (specifically ICNU member, Boise Cascade) from the merger credit in paragraph four of the Main Stipulation constitutes discrimination and therefore violates RCW 80.28.090 and RCW 80.28.100. (TR. pp.307-313)

Joint Applicants, Commission Staff, and Public Counsel argue that the exclusion of special contract customers from the merger credit is not unlawful discrimination. They argue that discrimination laws concern unfair discrimination within classes but not between classes. Commission Staff points out that Boise Cascade is receiving service under a special contract as opposed to a tariff. Thus, the parties are governed by the terms and conditions of the contract. Staff further points out that the discrimination standard is addressed in the Commission's special contract rule, WAC 480-80-335. Staff argues that in approving the special contract for Boise Cascade, the Commission has already determined that this customer is not similarly situated to other customers.

4. Commission Discussion and Clarifications.

The Commission has considered ICNU's objections to the proposed transaction presented by Mr. Wolverton and counsel for ICNU and finds that these arguments have been satisfactorily rebutted by the rebuttal testimony of Richard O'Brien (Ex. T-12), Alan Richardson (Ex. T-3), Graham Morris (substituting for Robert Green) (Ex. T-16), Andrew MacRitchie (Ex. T-31), the stipulations themselves (Ex. 82 and 83), and the panel responses to questions from the Bench at the August 19, 1999 hearing.

Additionally, the Commission does not accept ICNU's discrimination argument. It is a generally accepted principle in utility regulation that only unjust discrimination or undue preference under substantially similar circumstances and conditions is unlawful and prohibited. 1 A. J. G. Priest, Principles of Public Utility Regulation, at 288 (1969). Thus, statutes and regulations in this area typically are concerned with discrimination within a class of customers rather than between or among different classes of customers.

RCW 80.28.090 prohibits "any undue or unreasonable preference" and RCW 80.28.100 prohibits "rate discrimination" among similarly situated customers. See: Cole v. WUTC, 79 Wn. 2d 302, 485 P. 2d 71 (1971). Thus, for example, to substantiate a discrimination claim under RCW 80.28.100 against a power company for alleged overcharges based on the fact that two consumers were being charged lesser rates, the complainant must prove that the service to the other consumers was given "under the same or substantially similar circumstances and conditions," or that the charges to which it was subjected were not just, fair, reasonable, and sufficient, as compared with the rates charged the other consumers. State ex rel. Model Water & Light Co. v. Dept. of Public Service, 199 Wash. 2d, 90 P. 2d 243 (1939).

We note, too, that in WAC 480-80-335, the Commission expressly is concerned with discrimination within the class of special contract customers (i.e. those that receive "like service under substantially similar circumstances"), not discrimination relative to customers who take service under general rate schedules. Special contract customers are not similarly situated to general ratepayers. Accordingly, the exclusion of special contract customers from the merger credit does not constitute unlawful discrimination and does not violate RCW 80.28.090 and RCW 80.28.100.

The Commission accepts the Stipulations, subject to the clarification of certain terms in the Customer Service and Customer Service Guarantees sections and in Exhibits 1 and 2 of Appendix A to the Main Stipulation which are outlined below. Based on the record developed in this proceeding we find the transaction consistent with the public interest. Considering both risks and benefits, we find that customers will not be harmed. Rather, the Main Stipulation and the Low-Income Stipulation provide Washington customers with benefits unlikely to occur in the absence of the transaction.

The Main Stipulation commits Joint Applicants to Network Performance Standards, Customer Service Performance Standards, and Customer Guarantees. The Network Performance Standards and Customer Guarantees are backed by payments to customers for non-performance. The Main Stipulation also makes extensive environmental, community, and employee commitments. Additionally, it provides a merger credit of \$3 million dollars for four years. The Low-Income Stipulation commits Joint Applicants to working with the appropriate partners to identify and implement suitable programs that provide sustainable benefits for low-income customers. The Low-Income Stipulation also provides for a \$300,000 per annum commitment of shareholder funds for implementation of bill-payment assistance and energy efficiency programs, as well as the \$560,000 for low-income weatherization.

Thus, with the following clarifications to Appendix A of the Main Stipulation, the Commission finds that the Stipulations are consistent with the public interest and that the terms and conditions are fair, just, and reasonable.

a. We understand that the criteria for determining what constitutes “extreme events” as set forth in I.A.4. of Appendix A and Exhibits 1 and 2 to Appendix A to be based on the Institute of Electrical and Electronics Engineers (IEEE) definitions for “extreme events.” (See, Rebuttal testimony of Robin MacLaren, Ex. T-14 at p.12).

b. We understand that “responded to” in I.B.2.b. regarding disconnect complaints means investigation of the disconnection, report of the results of the investigation to the customer, and communication to the customer of the recommended action to correct the problem. (See, Direct testimony of Bob Moir, Ex. T-20 at p. 11)

c. We understand that “resolved” in I.B.2.c. and Exhibit 1 of Appendix A regarding Commission complaints means to reach resolution within 30 days of the date the Commission contacts PacifiCorp regarding the complaint, unless Commission Staff grants PacifiCorp an extension of time. (Id.)

d. We understand that “claim” in I.C.1.b. and 1.C.7.b., regarding penalties under Restoring the Customers Supply and Planned Interruptions, means that the customer is entitled to a bill credit of the penalty amount upon submission of a valid claim. (See Direct testimony of Bob Moir, Ex. T-20 at p. 13-14; Testimony of Douglas Kilpatrick, Ex. T-43 at p. 18-19.) Additionally, we note that paragraph fourteen of the Main Stipulation sets forth the commitment of Joint Applicants, Commission Staff, and Public Counsel to develop an effective education program for PacifiCorp’s customers regarding their rights and the steps to claim any payment due based on lack of performance on the part of PacifiCorp. (Ex. 82, Par. 14 at p. 4)

B. Should the Commission Exempt PacifiCorp’s Securities Issuance under RCW 80.08.047?

In support of the request for exemption under RCW 80.08.047, Joint Applicants allege that the application of Chapter 80.08 RCW to the instant securities issuance is not required by the public interest. Joint Applicants assert that the Commission's review of the transaction under RCW 80.12.020 and WAC 480-143-170 addresses the public interest question. The purpose of the securities issuance at issue here is to effectuate the transaction.

RCW 80.08.047 provides:

The commission may from time to time by order or rule, and subject to such terms and conditions as may be prescribed in the order or rule, exempt any security or any class of securities for which a filing is required under this chapter or any electrical or natural gas company or class of electrical or natural gas company from the provisions of this chapter if it finds that the application of this chapter to such security, class of securities, electrical or natural gas company, or class of electrical or natural gas company is not required by the public interest.

The Commission agrees that the purpose of the securities issuance is to effectuate the transaction. The Commission has found the transaction to be in the public interest. Accordingly, further review of the securities transaction is unnecessary, as the purpose of RCW 80.08.040 has already been fulfilled. We will grant Joint Applicants an exemption of PacifiCorp's securities issuance under RCW 80.08.047.

Having discussed above in detail the documentary evidence concerning all material matters, and having stated findings and conclusions upon contested issues, the Commission now augments those findings and conclusions with the following general statements on the evidence of record. Those portions of the preceding detailed findings and conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

FINDINGS OF FACT

1. The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, accounts, securities, property transfers, and mergers of public service companies, including electric companies.

2. PacifiCorp is engaged in the business of furnishing electric service within the State of Washington as a public service company. Scottish Power PLC is a multi-utility company serving customers in the United Kingdom with utility services including electricity, natural gas, water and wastewater services, and telecommunications.

3. On December 31, 1998, PacifiCorp and Scottish Power PLC jointly applied for an order from the Commission (1) disclaiming jurisdiction over the transaction or, in the alternative, authorizing the proposed acquisition and control of PacifiCorp by ScottishPower and (2) affirming that PacifiCorp has, through this application, complied with the requirements of RCW 80.08.040 with respect to the issuance of its common stock incidental to the proposed transaction.

4. The Amended and Restated Agreement and Plan of Merger submitted February 23, 1999, indicates that PacifiCorp and ScottishPower will be subsidiaries of Holdco, the new holding company. PacifiCorp will be the surviving corporation. The transaction will be effected through an exchange of stock. The corporate headquarters and principal executive offices will be in Portland, Oregon.

5. On August 13, 1999, the Joint Applicants, Commission Staff, and Public Counsel jointly filed the Main Stipulation for Commission consideration. On August 12, 1999, Joint Applicants, Public Counsel, the Energy Project, and NWECA jointly filed the Low-Income Stipulation for Commission consideration. The two stipulations resolve all outstanding issues among these parties.

6. All parties agreed that the prefiled testimony of Joint Applicants, Commission Staff, and ICNU, and the cross-examination exhibits of Joint Applicants and ICNU would comprise a stipulated record.

7. ICNU's objections to the proposed transaction have been satisfactorily rebutted by the rebuttal testimony of Joint Applicants, the two Stipulations, and the panelists responses to questions from the Bench at the August 19, 1999 hearing. Additionally, the Commission does not accept ICNU's discrimination argument.

8. Joint Applicants have the requisite financial and managerial fitness to take over PacifiCorp's operations.

9. Joint Applicants have provided adequate assurances for access to books and records to accomplish our regulatory oversight now and in the future.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and all parties to this proceeding.

2. The transaction, including the provisions of as provided in the Main Stipulation and the Low-Income Stipulation, and as clarified by this Order, is consistent with the public interest and should be approved.

3. Joint Applicants' request for an exemption of PacifiCorp's securities issuance under RCW 80.08.047 should be granted.

ORDER

1. The Commission accepts the Main Stipulation executed by PacifiCorp, ScottishPower, Public Counsel, and Commission Staff, with the clarifications stated in this Order incorporated by reference. A copy of the Main Stipulation is attached to this Order as "Attachment A" and is incorporated by reference.

2. The Commission accepts the Low-Income Stipulation submitted by PacifiCorp, ScottishPower, Public Counsel, the Energy Project, and NVEC. A copy of the Low-Income Stipulation is attached to this Order as "Attachment B" and is incorporated by reference.

3. The Commission approves the transaction, in accordance with the Agreement and Plan of Merger dated December 6, 1998, the Amended and Restated Agreement and Plan of Merger dated February 23, 1999, the Main Stipulation, and the Low-Income Stipulation.

4. The Commission grants Joint Applicants' request for an exemption of PacifiCorp's securities issuance under RCW 80.08.047.

5. The Commission retains jurisdiction over the subject matter and the parties to effectuate the provisions of this Order.

DATED at Olympia, Washington, and effective this 14th day of October, 1999.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner

NOTICE TO PARTIES: This is a final Order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this Order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1)