

Service Date: September 19, 1990

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

In the Matter of the Application of)	
PACIFICORP for authority to (1))	
guaranty not more than \$75,000,000)	UTILITY DIVISION
principal amount of debt, together)	
with interest thereon, on behalf)	
of its PACIFICORP K PLUS EMPLOYEE)	DOCKET NO. 90.8.50
SAVINGS AND STOCK OWNERSHIP PLAN)	
AND TRUST, (2) enter into such)	
agreements or arrangements with)	DEFAULT ORDER NO. 5496
financial institutions necessary to)	
effect the guaranties, and (3) issue)	
and sell not more than 7,000,000)	
additional shares of its Common)	
Stock to the Plan, from time to time)	
no later than December 31, 1993.)	

On August 27, 1990, PacifiCorp (Company), a corporation organized and existing under and by virtue of the laws of the State of Oregon and qualified to transact business in Montana, filed with the Montana Public Service Commission (Commission) its verified application, pursuant to Sections 69-3-501 through 69-3-507, MCA, requesting an Order authorizing the Company to (1) guaranty not more than \$75,000,000 principal amount of debt, together with interest thereon, on behalf of the PacifiCorp K Plus Employee Savings and Stock Ownership Plan and Trust (Plan), (2) enter into such agreements and arrangements with financial institutions necessary to effect the guaranties, and (3) issue and sell not more than 7,000,000 additional shares of its Common Stock (new shares) to the Plan, in each case from time to time no later than December 31, 1993.

The application is supported by exhibits and data in accordance with the rules and regulations of the Commission governing the authorization of the issuance or guaranty of securities by electric and gas utility companies operating within Montana.

For detailed information with respect to the general character of the Company's business and the territories served by it, reference is made to its annual reports on file with the Commission.

The application sets forth Counsel who will pass upon the legality of the proposed issuances and guaranties, the other regulatory authorizations required, and the propriety of the proposed issue and guaranties.

At a regular open session of the Montana Public Service Commission held in its offices at 2701 Prospect Avenue, Helena, Montana, on September 17, 1990, there came before the Commission for final action the matters and things in Docket No. 90.8.50, and the Commission, having fully considered the application and all the data and records pertaining to it on file with the Commission and being fully advised in the premises, makes the following:

FINDINGS

1. PacifiCorp is a corporation organized and existing under and by virtue of the laws of the State of Oregon and is qualified to transact business in the State of Montana.

2. PacifiCorp is operating as a public utility as defined in Section 69-3-101, MCA, and is engaged in furnishing electric service in Montana.

3. Pursuant to a Plan of Reorganization and Merger, as amended, PacifiCorp, a Maine corporation, and Utah Power & Light Company, a Utah corporation, merged with and into the Company. The Company was incorporated under Oregon law in August 1987 for the purpose of facilitating consummation of the merger and changing the state of incorporation of PacifiCorp. The Company uses the assumed business name of either Pacific Power & Light Company or Utah Power & Light Company within their respective service territories located in the states of Oregon, Utah, Washington, Idaho, Wyoming, Montana and California.

4. The Commission has jurisdiction over the subject matter of the application under section 69-3-102, MCA.

5. Notice of the application was published as a part of the Commission's regular weekly agenda.

6. The Company proposes to cover qualified union and non-union employees under leveraged employee stock ownership trusts (ESOPs) included as a part of its PacifiCorp K Plus Employee Savings and Stock Ownership Plan. The leveraged ESOPs will continue benefits similar to those provided to the Company's employees under existing leveraged employee stock ownership trusts.

The Company believes that the leveraged ESOPs will allow it to provide employee benefits at a lower cost than would be possible by other methods. The leveraged ESOPs also encourage increased employee ownership of PacifiCorp Common Stock.

7. Effective January 1, 1983, the Company implemented an Employees' Stock Ownership Plan and Trust for qualified non-union employees of the Company. Effective January 1, 1985, the Company implemented its Bargaining Employees' Stock Ownership Plan and Trust for those qualified employees of the Company covered by collective bargaining agreements providing for participation in that plan. Employer contributions under these plans had been discontinued for years after 1986 as a result of a change in tax laws. These plans, along with similar employee savings plans at

the Company's subsidiary companies, were consolidated for administrative efficiency into the PacifiCorp K Plus Employee Savings and Stock Ownership Plan effective January 1, 1988.

Effective January 1, 1988, the Company implemented a \$30 million leveraged ESOP trust for qualified non-union employees of the Company and its subsidiaries. The borrowing entered into by the leveraged ESOP trust was guaranteed by Inner PacifiCorp, which is not subject to the jurisdiction of the Commission for the issuance of securities or the guaranty of indebtedness. Because this leveraged ESOP arrangement qualified under the Internal Revenue Code Section 133, one half of the qualified interest income received by the lending institution was excludable from taxable income. This feature, although no longer available, permitted the lending institution to provide loans to the leveraged ESOP trust at below market interest rates. The borrowing associated with this leveraged ESOP arrangement will be repaid prior to its scheduled maturity (January 1, 1993) because of the ability to apply matching contributions to repay the loan and a higher level of employee participation in the associated elective employee contribution program than expected, thereby triggering more matching contributions than anticipated.

Effective July 1, 1988, a leveraged ESOP arrangement was established for certain union employees of the Company as specified within a collective bargaining agreement. The borrowing for this arrangement amounted to \$5.5 million, which was guaranteed by the Company pursuant to the Commission's authorization granted under Docket No. 88.5.11, Default Order No. 5345. A third leveraged ESOP arrangement was established effective July 1, 1989, for certain other union employees of the Company. This arrangement required a borrowing of \$5.15 million, which was also guaranteed by the Company pursuant to the authority granted in Docket No. 89.6.18, Default Order No. 5417. The borrowings for these leveraged ESOPs

for union employees are expected to be repaid prior to December 31, 1993.

Utah Power & Light Company has maintained an Employee Savings and Stock Purchase Plan (a stock bonus/thrift plan) for non-union employees and qualified union employees since 1968. The Company intends to arrange for the transfer of benefits for non-union employees under the Utah Power plan to the PacifiCorp K Plus Employee Savings and Stock Ownership Plan effective January 1, 1991, and for union employees later as agreed pursuant to collective bargaining.

8. The Company desires to implement new leveraged ESOP arrangements in order to continue to provide eligible employees of the Company with the benefit of having the Company's Common Stock held for them through a qualified retirement plan. The leveraged ESOPs will be designed to meet the requirements and applicable regulations of sections 409 and 4975(e)(7) and related provisions of the Internal Revenue Code.

The Company will provide for coverage of employees through a Trust administered by a Trustee for the leveraged ESOPs, who will then borrow not more than \$75,000,000 in one or more separate borrowings (Loans) from one or more financial institutions (Lenders). The Company will guaranty payment of principal and interest on the Loans. The proceeds of the Loans will be used by the Trustee to acquire PacifiCorp Common Stock in the open market or from the Company. If the Company sells new shares to the Plan, the sales price per share will be the closing price of the Common Stock as of the business day prior to the date of any such sales as reported on the New York Stock Exchange Composite Transactions, or such other price as shall be determined to be the fair market value of such shares for purposes of ERISA.

The interest and principal on the Loans will be paid with cash received by the Trustee from several sources. These sources are:

- (a) dividends on the shares of PacifiCorp Common Stock acquired by the Trust with the proceeds of the loans

while shares are held in a Trust suspense account before being allocated to participants' accounts (Unallocated Shares). PacifiCorp currently pays a quarterly dividend on the Common Stock of \$0.36 which translates to an annual dividend of \$1.44. To the extent that PacifiCorp continues to pay a dividend on its Common Stock, and the Trust owns shares of PacifiCorp Common Stock that have not been allocated to employees' accounts, the dividend received will be available to service the guaranteed debt;

- (b) Company contributions equal to a fixed percentage of each participant's qualifying earnings during the applicable period. The Company expects to contribute to the Trust a fixed percentage (expected to be 2 percent for non-union employees) of each participant's qualifying earnings. The percentage provided for union employees will be determined based upon the results of collective bargaining;
- (c) Company contributions matching a portion of the employee's pre-tax contributions pursuant to salary reduction agreements permitted under Internal Revenue Code Section 401(k). The Company currently has employee savings plans qualified under Internal Revenue Code Section 401(k). The employee savings plans give employees the opportunity to defer pre-tax income until retirement or other termination of employment. They act as supplemental retirement programs. Employers are permitted under the Internal Revenue Code to make deductible contributions that match all or part of the pre-tax contributions elected by the employees. The Company expects that during 1991, it will match contributions for non-union employees at a rate of .5 times the amount of pre-tax contributions elected by the employee up to a pre-tax contribution level of 6 percent of the employee's compensation. Therefore, the Company would contribute an amount up to 3 percent of an employee's compensation as its matching contribution associated with the employee's elective pre-tax contribution for 1991. The matching contribution for non-union employees may change in later years. Matching contribution rates for union employees will be established from time to time pursuant to collective bargaining; and
- (d) additional Company contributions necessary to pay interest costs on the Loans to the extent not currently covered by (a) above. The Company expects that the interest cost on the ESOP Loans may be higher than the dividends received on the Unallocated Shares. Additional Company contributions will be made to cover any such shortfall.

9. The unallocated shares will be held by the Lenders as collateral for the repayment of the Loans. As cash from the described sources are received by the Trust and principal payments are made, the lien of the Lenders will be released and the Common Stock will be allocated to participants.

10. The results of the Loans and issuances of new shares are expected to be:

Estimated Results of the Loans

	<u>Company</u>	<u>Guaranteed by: Inner PacifiCorp **</u>
Gross Proceeds	\$75,000,000	\$50,000,000
Less: Brokerage Commissions to Purchase Stock*	<u>(193,050)</u>	<u>(128,700)</u>
Net Proceeds Available to Purchase Stock	<u>\$74,806,950</u>	<u>\$49,871,300</u>

*Based upon August 22, 1990 closing stock price of \$19.375/share and a brokerage commission fee of \$.05/share. This cost will be borne by the leveraged ESOP. These commissions would not be incurred if new shares are sold to the Plan.

**Additional proceeds from loans guaranteed by Inner PacifiCorp would also be available to purchase new shares from the Company. Those proceeds are not expected to exceed \$50,000,000.

Expenses Allocable to the Company

Regulatory Agency fees	\$ 500
SEC Registration fee	7,500
Exchange Listing fees*	50,000
Bank Loan fees	75,000
Company Counsel fees	30,000
Consultant's fees	10,000
Lender's Counsel fees	50,000
Trustee's Legal fees	10,000
Accountant's fees	3,500
Printing fees	10,000
Miscellaneous fees	<u>3,500</u>
Total Expenses	<u>\$250,000</u>

*These expenses would be incurred only if new shares are issued.

11. In the event of issuances of new shares, the net proceeds of the issuance of new shares will be used to reimburse the Company's treasury for funds expended from income and from other treasury funds that were not derived from the issuance of securities. The funds to be reimbursed were used in furtherance of one or more of the utility purposes authorized by Section 69-30-501 MCA. To the extent that the funds to be reimbursed were used for the discharge or refunding of obligations, those obligations or their precedents were originally incurred in furtherance of utility purposes.

12. Issuances to the Plan are part of an overall plan to finance the cost of the Company's facilities taking into consideration prudent capital ratios, earnings coverage tests, and market uncertainties as to the relative merits of the various types of securities the Company could sell.

13. The issuance of an order authorizing the proposed guaranties and issuances does not constitute agency determination/approval of any issuance-related ratemaking issues which issues are expressly reserved until the appropriate proceeding.

CONCLUSIONS

The proposed guaranties and issuances to which the application relates will be for lawful objects within the corporate purposes of the Company. The method of financing is proper. The application should be approved.

ORDER

IT IS THEREFORE ORDERED by the Commission that:

1. The application of PacifiCorp, filed on August 27, 1990, for authority to guaranty not more than \$75,000,000 principal amount of debt, together with interest thereon, on behalf of the PacifiCorp K Plus Employee Savings and Stock Ownership Plan and Trust (Plan), pursuant to sections 69-3-501 through 69-3-507, MCA, the proceeds from the guaranteed debt to be used by the Plan to purchase PacifiCorp Common Stock on the open market or from the Company to provide for leveraged employee stock ownership arrangements for qualified union and non-union employees, from time to time no later than December 31, 1993, is approved.

2. The application of PacifiCorp to enter into such agreements or arrangements with financial institutions as may be necessary to effect the guaranties and pursuant to which the Company would assume obligations as guarantor, with respect to full payment and complete performance when due (whether at stated maturity, by reason of acceleration, or otherwise) of all indebtedness, obligations, covenants and duties of, and all terms and conditions to be observed by the Plan's Trustee for the benefit of the institution or institutions lending funds to the Plan Trust, from time to time no later than December 31, 1993, is approved.

3. The application of PacifiCorp to issue and sell not more than 7,000,000 additional shares of its Common Stock to the Plan, from time to time no later than December 31, 1993, is approved.

4. PacifiCorp shall file the following as they become available:

- a) The "Report of Securities Issued" required by 18 CFR 34.10.
- b) Verified copies of any agreement entered into in connection with the guaranties entered into pursuant to this order.
- c) A verified statement setting forth in reasonable detail the disposition of the proceeds of the borrowings made pursuant to this order.

5. Issuance of this order does not constitute acceptance of PacifiCorp exhibits or other material accompanying the application for any purpose other than the issuance of this order.

6. Approval of the transaction authorized shall not be construed as precedent to prejudice any further action of the Commission.

7. Section 69-3-507, MCA, provides that neither the issuance of securities by PacifiCorp pursuant to the provisions of this order, nor any other act or deed done or performed in connection with the issuance, shall be construed to obligate the State of Montana to pay or guarantee in any manner whatsoever any security authorized, issued, assumed, or guaranteed.

8. This order shall be effective upon execution.

DONE IN OPEN SESSION at Helena, Montana, this 17th day of September 1990, by a 4-0 vote.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

DANNY OBERG, Vice Chairman

WALLACE W. "WALLY" MERCER, Commissioner

REX MANUEL, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.