

**GATS and State-Level Regulatory Powers:
Regulation of Electric Utility Acquisitions by the
The Idaho Public Utilities Commission**

January 14, 2003

On November 15th 1999 the Idaho Public Utilities Commission (PUC) issued order number 28213 approving the merger application of PacifiCorp and ScottishPower. The order imposes 46 conditions on the approval of the merger to protect Pacificorp's Idaho ratepayers. The Idaho Public Utilities Commission is empowered to impose these conditions by Idaho Code § 61-328 "Duties of Public Utilities." Section 61-328 and related statutes help protect the interests of Idaho's consumers, businesses, and farmers by regulating a service that is essential for the maintenance of state's economic prosperity and high standard of living.

Idaho Public Utilities Commission order number 28213, approving the ScottishPower and PacifiCorp merger, contains the following conditions on the transaction:

32. (*In part*) PacifiCorp and ScottishPower shall advocate before the Securities and Exchange Commission, shareholders, and other jurisdictions, a corporate structure that contains a holding company as a parent and does not include a new separate entity to provide corporate services.

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

GATS article 17, concerning market access provisions, prohibits members from maintaining or adopting measures which "restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service." Without the USTR creating an exception for public utility regulation, these conditions could violate potential GATS energy sector agreements.

Idaho Code § 61-328 (pertaining to the sale, transfer or assignment of electric utility property) requires that in order to gain PUC authorization, any acquisition or transfer of electric utility property be "consistent with the public interest."

GATS article six, concerning domestic regulation provisions, prohibits members from maintaining or adopting measures relating to qualification requirements and procedures which are not based on "objective and transparent criteria, such as competence and the ability to supply the service." It is quite conceivable that a future foreign purchaser of an Idaho public utility would argue that "consistent with the public interest" is not an "objective and transparent criteria" and therefore a violation of the GATS agreement.