BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PACIFICORP for Approval of Its Proposed Electric Rate Service Schedules & Electric Service Regulations	POST-HEARING BRIEF OF THE UTAH INDUSTRIAL ENERGY CONSUMERS DOCKET NO. 01-035-01

In response to the request of the Commission, the Utah Industrial Energy Consumers ("UIEC") hereby submits this Post-Hearing Brief.

INTRODUCTION

Beginning in May of 2000, the electric power market experienced the most dramatic change in wholesale prices in history. Attributable in the minds of some to California's failed experiment in deregulation, wholesale prices increased by more than 400% over a similar period in 1999.[1] In the context of that extraordinary market, PacifiCorp (also the "Company") continued to purchase and sell short-term power, hoping to profit on the margins. Simultaneously, PacifiCorp left itself vulnerable to increases in wholesale power prices by selling the Centralia Power Plant in Washington without adequately planning for replacement power. As a result, PacifiCorp's purchased power costs in this case are higher than ever before.

In seeking a rate increase from the Utah Public Service Commission ("Commission"), PacifiCorp has attempted to annualize these extremely high market prices. However, since the test year, market prices have subsided. Additionally, the FERC has placed a cap on certain wholesale transactions, so that if PacifiCorp were to receive the full requested increase, it would substantially overearn when rates go into effect.

The UIEC have addressed three primary issues in this case. First, the UIEC recommend that the Commission disallow PacifiCorp's proposed adjustment to annualize high market prices. Second, to the extent that PacifiCorp has engaged in purchases and sales that are unnecessary to meet its retail and wholesale obligations, UIEC believe PacifiCorp should bear any losses resulting from such transactions. The UIEC recommends that its revenue requirement, therefore, be reduced by $16.6 million to reflect those market losses. Finally, the UIEC urge the Commission to be wary of PacifiCorp's claims that it will be harmed in the financial markets unless it receives its full reavested increase. The Commission has already accepted a stipulation allowing PacifiCorp an 11% return on equity. The Commission need only set rates that allow PacifiCorp a fair opportunity to earn its rate of return to avoid financial harm to the Company.

ARGUMENT

A. Annualized Market Prices.

PacifiCorp has selected a test year running from October 1, 1999 through September 30, 2000. The test year contains four months during which the Company experienced, in its own words, an "extraordinary" increase in market prices. Widmer Direct, UP&L Exh. 7 at 4. It seeks to annualize that price increase by applying a formula that uses index prices to assign proportionally extraordinarily high costs to every month in the test year. The Commission should reject the Company's market price adjustment because it is neither reflective of the costs during the test year nor the costs that the Company will face when rates go into effect.

The Commission's Rule on Annualization of Test-year data provides in relevant part:

> An "item of test year data may be annualized in the determination of a utility's rates if it meets the following criteria:

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[1] See Exhibit UIEC 2.1, Schedule 2.

> ….
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> D. The change must be known to occur at a specific moment or moments in time.
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> E. The effects of the change must be measurable.
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> ….
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> G. The change must be expected to be ongoing after final rates become effective.

R746-407-3. The stated purpose for the Rule is to "enable the Commission to more accurately coordinate a utility's rates with the utility's anticipated revenues and costs by recognizing that some of the conditions that arise during a test period are ongoing and must be spread over the entire period." R746-407-1. The Commission should not accept the Company's proposed adjustment to purchased power costs because the adjustment does not meet the criteria of the Rule in that it: (1) the market price increase did not occur at a specified moment in time; (2) it is not adequately measurable; and (3) it is not ongoing.

1. <u>The Change Did Not Occur at a Specific Moment in Time</u>.

The change in market prices was not an event occurring at some specific moment in time. R746-407-3(D). As shown in data provided by the Company, the increase began sometime in May 2000, and continued through the ensuing five months. Exh. UIEC 2.1, Schedule 1 at 4; Widmer, Tr. at 948. Ordinarily, a price increase in a particular contract occurs on a specific day and continues at that price so that the magnitude of the price increase and the period over which it occurred during the test year are unambiguous. Tr. at 950. By contrast, in the instant case, the price increase began on an unspecified day in May. Yet, the Company has imputed average June through September prices proportionally across the remaining 8 months, including May, to increase the prices in those 8 months. Widmer Rebuttal, Exh. UP&L 5R at 7-8; Tr. at 470-71.

By failing to identify the beginning moment of the change, and then applying the annualized proportional increase to May, PacifiCorp has, in essence, overstated May prices. In short, because the price increase did not occur at an identifiable moment in time, the Company has not been able to accurately calculate the magnitude of the change in the test year.

2. The Effect of the Change Is Not Adequately Measurable.

The Commission's Rule also requires that in order to annualize a change, the effects of the change must be measurable. R746-407-3. In the last rate case the Commission stated:

> The purpose of normalization in the context of an historical test year is to adjust actual information for known and measurable events occurring during the test year, establishing a normal and recurring level of costs and revenues.

Report and Order, Docket No. 99-035-10 at 36 (emphasis added). The Commission recognized that any annualized power cost is the product of assumptions that are "in large part subjective." Id. at 36. Given the "highly fluid" market conditions in the western region and the subjectivity involved, the Commission stated that it has "little confidence in what constitutes a known and measurable change."

PacifiCorp has attempted to adjust purchased power costs for the test year to reflect the increase in market prices that it began to experience in May 2000. However, the proposed adjustments are not reflective of the prices actually experienced because the Company based its annualized prices on an index that has little if any proven relationship to the prices the Company actually paid for purchased power. Falkenberg, Exh. DPU 9 at 23-24. The Commission should be cautious about placing reliance on index costs, especially when a change in the index results in such a large change in costs as it does in this case. Id.; Chalfant, Exh. UIEC 2 at5-6. Mr. Chalfant showed applying the Company's proposed adjustment to purchases and sales occurring

during October through May would result in increasing unweighted average monthly prices by a multiple of between 1.7 to 6.8. Id.

Further, the effect of market increases during the test year is uncertain because the Company did not consider the non-price implications of increased prices. Its annualization formula assumes that the Company would have made the same purchases and sales during eight months of the test year, regardless of an increase of nearly four-fold in price. Exh UIEC 2 at 3. On the contrary, Mr. Chalfant showed that, in fact, PacifiCorp sharply reduced its long-term and intermediate sales and increased its purchases during November and December of 2000 when compared with the same months in 1999. While the Company identified factors such as the Centralia sale and the Hunter outage[2] as reasons for the difference, it is safe to assume that a portion the difference in sales and purchases was attributable to high market prices. Any utility acting responsibly would try to reduce purchases and increase its sales in response to an escalating market. The Commission cannot quantify with any confidence the effect that high market prices had on the Company's decisions.

Finally, PacifiCorp's attempt to annualize market prices does not effectively measure changes in market prices that will occur during the period that rates are in effect. The Company does not know what short-term or non-firm market prices will be in the rate-effective period. Tr. 951. To the extent the Company bought forward short-term contracts during a period of high market prices, those prices can be measured, but they will also be accounted for in actual test-year prices. The Company's annualization does not assist in measuring short term and non-firm market prices beyond the test year.

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[2] The Hunter outage would only have significantly impacted December purchases and sales.

The UIEC do not dispute that PacifiCorp's costs increased by some magnitude, but in view of the uncertainties in the index prices used, the Company's failure to account for non-price implications, and the inability to measure the change in market prices during the rate effective period, the effect of the market increase during the test year is almost certainly not as the Company has attempted to measure.

3. **The Change Is Not Ongoing.**

Power costs should not be annualized in this case because PacifiCorp has not shown, nor is it able to show, that the change in market prices occurring during the test year is expected to be ongoing after final rates become effective. See R746-407-3(G). The Company's annualization of power costs based on June through September 2000 prices is reasonable only if PacifiCorp can prove that purchased power costs will remain at those levels through the rate effective period. Id. The Company does not know whether future costs will remain consistent with costs experienced during the test year. Widmer Tr. at 951. But, evidence on this record demonstrates that purchased power costs have not remained constant, but have declined. Exh. UIEC 2.1 Schedule 2.

Moreover, although it is impossible to predict future market prices, it is unlikely that the market will experience another sudden fly-up of the magnitude experienced in the test year. On June 19, 2001, the FERC issued an Order on Rehearing in the San Diego Gas & Electric case[3] establishing a system of price caps applicable to Western wholesale power sales. The price cap is equal to the marginal cost of gas plus O&M whenever capacity reserves are short. If

[3] San Diego Gas and Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange, Docket No EL00-95-31,

PacifiCorp is short in the future, the price it will pay to purchase the shortfall will be constrained by the cap.[4] The Order virtually ensures that wholesale prices in the future will not be what the Company's annualization predicts they will be.

The purpose of PacifiCorp's annualization proposal is to capture the magnitude of market price changes occurring during the test year, so that rates in the future can reflect similarly high wholesale prices. Tr. at 442, 949. Based on the expectation that market prices would continue, the Company is asking the Commission to fix into future rates the extraordinary yet temporary increase in purchased power prices. Its request manifests the kind of unreasonable result that the Commission's Rule was intended to prevent. It is abundantly clear today that the costs experienced in June through September of 2000 are not "recurring" in the sense that they can or should be normalized into rates. The Commission should reject the Company's normalization proposal and determine this case on the basis of actual purchased power costs.

The DPU and the CCS have recommended that the Commission eliminate the Company's adjustment annualizing the increase in short-term firm and non-firm costs and prices and use actual costs and prices instead. Mr. Falkenberg concluded that removing the Company's adjustment would result in a reduction in PacifiCorp's proposed revenue requirement of $149 million company-wide, or a $55.3 million reduction in the Utah jurisdiction. Exh. DPU 9SR. While the UIEC cannot verify the DPU/CCS' result, they concur with the principal that the market price adjustment should be eliminated.

Order on Rehearing of Monitoring and Mitigation Plan for the California Wholesale Electric Markets, Establishing West-Side Mitigation, and Establishing Settlement Conference, (June 19, 2001).

[4] It is unfortunate that in another of PacifiCorp's ill-fated marketing decisions, it evidently purchased short-term forward contracts at the peak of the market. It claims that the FERC cap will prevent it from selling excess supplies

The UIEC initially determined from the actual cost and price data supplied by PacifiCorp that removing the proposed adjustment for changes in market prices would decrease total company power costs by $102 million and reduce the Utah revenue requirement by $37.7 million. Chalfant, Exh. UIEC 2.1 Schedule 3. It should be noted, however, that the data that Mr. Chalfant received from the Company indicated that the market price adjustment had been applied to the Green Mountains and Southern Cal Edison ("SCE") contracts, even though these are long term contracts. See Exh. UIEC 2.1, Schedule 1, p. 4 of 4. Consequently, when Mr. Chalfant developed his comparison of actual prices with the Company's annualized prices, he had to remove the adjustment for Green Mountains and SCE. Exh. UIEC 2.1, Schedule 3. The UIEC believe that it was inappropriate, even under the Company's proposal, to include long-term sales and purchases in its annualization.[5]

In addition, in calculating actual prices of short-term sales, Mr. Chalfant considered the Company's contract with the San Diego Gas & Electric to be intermediate-term and therefore excluded it from short-term sales for Utah. Exh. UIEC 2.1, Schedule 3, p. 1 of 3. He did not affirmatively determine that the SDG&E contract was also excluded from PacifiCorp's adjusted costs. Exh. UIEC 2.1, Schedule 3, p. 2 of 3. The Company's testimony suggests that the SDG&E was included in its annualization. Widmer Rebuttal, UP&L 5R at 3-4; 5R.1, 5R.2. If that were the case, then Mr. Chalfant would have greatly understated his total sales revenue adjustment, with the result of understating by tens of millions of dollars the reduction in revenue requirement as a result of removal the Company's annualization adjustment.

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at a price that will offset those purchases. Yet overall, the Company states that it does not know whether the price cap will help or harm it in the long run.

The UIEC recommend that the Commission disallow PacifiCorp's proposal to annualize high market prices and determine the appropriate net power costs in this case by using actual prices and costs instead. Because the data produced by the Company may have precluded an accurate accounting of those actual prices and costs, the UIEC recommend that the Commission determine the correct data and apply Mr. Chalfant's methodology to remove the Company's market price adjustment.

B. Losses on the Wholesale Market.

During the last rate case, the Company came to the Commission seeking to recover purchased power costs, in part because it had been caught short in the electric market when power costs began to escalate in the fall of 1998. Docket No. 99-035-10, Tr. at 523, 571, 676. In that case, PacifiCorp had sold capacity on low-priced, long-term contracts and then, finding itself short, had to cover with high-priced, short-term purchases. The Commission refused to force the ratepayer to subsidize the risk of the Company's trading losses. Report and Order, Docket No. 99-035-10 at 38. Accordingly, the Commission removed the effect of losses on short term purchases and sales by setting purchase prices at sales prices for months in which the price of short-term purchases exceeded the price of short term sales. Id. at 40.

In the present case, the Company has come to the Commission seeking to recover purchased power costs in part because at the peak of the fly-up in wholesale prices, it purchased short-term forward contracts and now realizes that those contracts will be above market when the power is delivered. Widmer Tr. at 926. Again, the Division and the Committee have recommended the same mechanism to eliminate losses from short-term firm transactions.

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[5] The UIEC have not presented testimony or other evidence advocating any adjustments for long-term contracts in

Falkenberg, Exh. DPU 9 at 25-26. Based on the annual monthly averages of sales and purchase prices, the DPU and CCS have recommended an adjustment to the Company's net power costs of $46.9 million on a total Company basis, or $17.3 million on a Utah basis. Exh. DPU 9SR; Tr. at 1113-14. Adoption of the DPU/CCS position would be consistent with the Commission's decision in the last case.

Alternatively, the Commission should consider the UIEC's proposal. The Company has criticized the DPU/CCS's approach in this case because it did not take into account "time-related differences" and did not "adequately measure the profitability of transactions undertaken to handle the complex process of balancing and optimizing the Company's system." Widmer Rebuttal, Exh. UP&L 5R at 24-25. Mr. Chalfant's analysis of system losses was designed to address precisely those concerns. His method recognizes the Company's need to balance the system as well as the fact that the Company's decisions in purchasing and selling short-term power are not driven solely by its need to cover the retail and long-term wholesale load. Using a database received from the Company that lists each hour of the year every purchase and every sale of power, Mr. Chalfant separated the Company's sales and purchases relating to serving its retail load, long-term and intermediate-term commitments before determining whether the Company had experienced losses on its wholesale trades. For each hour of the year, Mr. Chalfant determined the Company's hourly requirements by adding native retail load, plus long-term sales, plus intermediate-term sales, plus any other miscellaneous exchange commitments or requirements met during that hour. From the sum of those items, he subtracted the Company's generation, long-term and intermediate-term purchases, as well as positive

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this case, but support the adjustments proposed by the DPU/CCS.

exchanges and miscellaneous transactions. Exh. UIEC 2 at 12-13; Exh. UIEC 2.2, Schedule 1. The result showed whether the Company required additional power to balance the system, or whether it had surplus power available to be sold. Where additional power was required to balance the system, Mr. Chalfant assigned the lowest-priced short-term purchases to retail customers until the system was balanced. If the net requirement showed a surplus, Mr. Chalfant credited to retail customers the average price of short-term sales during that hour. Having balanced the system, Mr. Chalfant then was able to calculate profits or losses from all remaining transactions conducted during that hour. See Chalfant Direct, UIEC 2 at 12-13. The result of all trades above retail and wholesale system requirements for every hour of the test year indicates that on a system-wide basis, the Company's losses due to short-term firm and non-firm transactions were $44.77 million, or approximately $16.6 million for the Utah jurisdiction. Revised Exh. UIEC 2.2[6]

Company witnesses testified in some detail about how purchases and sales decisions are made within the Company and argued that those purchases and sales were "prudent." The Commission cannot and need not undertake the difficult, if not impossible, task of assessing the prudence of short-term contracts. It cannot, because none of the short-term contracts were ever submitted to the Commission for a prudence review. TR. at 954-55. It need not, because none of the trades on which PacifiCorp's shareholders should bear the loss were necessary for

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[6] This calculation was based on October and November 2000 sales and purchases instead of October and November 1999, because the last quarter of 2000 is more representative of the rate-effective period than the last quarter of 1999. December 2000 was not included in this calculation because the Hunter outage in December 2000, uncharacteristically increased the volumes of purchased power. If Mr. Chalfant's calculations are confined to the test year October 1999 through September 2000, the losses from short-term transactions is $32.5 million company-wide and $12.1 million for the Utah jurisdiction. Revised Exh. UIEC 2.2. At hearing, during cross examination of Mr. Falkenberg, UIEC counsel drew a comparison between Mr. Falkenberg's and Mr. Chalfant's calculation of short

PacifiCorp to fulfill its function as a public utility. Because Mr. Chalfant's analysis balanced the system before calculating losses from short-term transactions, none of those losses are due to transactions necessary to meet PacifiCorp's retail and wholesale utility obligations. All of the individual transactions on which losses occurred were due to PacifiCorp's attempt to earn profits from market speculation.[7]

Further, the Company's criticism of Mr. Chalfant's analysis suggests an utterly absurd result. The Company's witness, Mr. Widmer, agreed that Mr. Chalfant's analysis of sales and purchases hour-by-hour was a more valid comparison than an analysis based on monthly or annual aggregated basis. Tr. at 930. Mr. Widmer criticized Mr. Chalfant, however, for not also restricting the comparison to transactions involving the same product, the same execution date, and the same point of delivery, in addition to the same hour. Exh. UP&L 5R at 16-17. Yet, Mr. Widmer acknowledged that the Company would not likely ever buy and sell the same product in the same hour, whether or not the delivery point was the same. Tr. at 939. If Mr. Widmer's restrictions were adjusted, any analysis of gain or loss from short-term sales and purchases would be impossible because, in any given hour, there would be no comparable transactions.

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term and non-firm market losses. The comparison was inaccurate because Messrs. Chalfant and Falkenberg used slightly different test years. Tr. at 1177.

[7] E.g., Watters, generally; Widmer Rebuttal, Exh. UP&L 5R at 17-18. This case is not about whether short-term or non-firm purchases and sales were prudent. As PacifiCorp's counsel pointed out in a colloquy with the Commission during hearings, a review of prudence usually relates to the building of new plant (or long-term contracts) and involves an inquiry into whether the Company's costs are reasonably incurred. Tr. at 1363-67. Presumably, before such costs find their way into rates, there is an opportunity for some investigation and determination of whether they were prudently incurred so that the Commission can ensure that only legitimate expenses are included in rates. "Prudence" as the Company has used it to describe short-term and non-firm purchases in this case seems to mean only that it has bought power under its own forward price curve. Watters, Tr. at 319-20. There is no opportunity for review of those contracts, nor any means to verify the reasonableness of the price curves. Tr. 979-981. Moreover, once the Company's traders have balanced the system, the objective of making further trades is to earn profits for shareholders. See Tr. at 196-97 (Company "earns its rate of return" through very short-term trading). These are business decisions of the Company for which it is entirely appropriate that the Company assume the risk.

The UIEC submit that Mr. Chalfant's analysis accurately reflects not only PacifiCorp's hour-by-hour gains and losses, but it also separates those transactions that were undertaken for the purpose of meeting its obligations as a public utility from those undertaken to generate dividends for the shareholders. The Commission should follow its own lead in the last rate case and reduce the proposed revenue requirement by $16.6 million to reflect market losses.[8]

C. PacifiCorp's Credit Rating.

The Company has come to the Commission in this case claiming that if it does not receive the full amount of its requested increase, it will suffer in the financial markets. Karen Clark offered testimony that Moody's has placed PacifiCorp on review for a possible downgrade because of uncertainty regarding whether it will recover purchased power costs. Clark Rebuttal, Exh. UP&L 2R at 3. Even though this Commission, unlike the Wyoming or Oregon Commissions, already has granted substantial interim increase, the Company suggests it is this Commission's responsibility to rescue the Company from a declining credit rating. Id. at 9-10. PacifiCorp's position should be rejected. The Company's analysis of PacificCorp's financial ratios is plainly wrong. The Company is not in the dire financial straits that it would have the Commission believe it is. Moreover, PacifiCorp's return on equity has been set at 11% as a result of this case. Order Approving Stipulation on Certain Revenue Requirement Issues, Docket No. 01-035-001, August 17, 2001. Mr. Gorman gave sound reasons why with 11% return, the Company would not be hurt in the absence of any further increase. Exh. UIEC 1SR at 7-8; 1SR.1; Tr. at 709-11. Under these circumstances, it is not the Utah Commission's responsibility to take up the slack when other jurisdictions decline to grant a similar increase.

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[8] It should be noted that removal of losses would not affect the magnitude of any other adjustment proposed by the

In an attempt to demonstrate why the Company should be granted the requested increase, the Company submitted in this case, as it did in the interim case, its calculations of PacificCorp's financial ratios. Those ratios reflect a distorted picture of the Company's financial status because they include the addition of hundreds of millions of dollars in imaginary debt. See Clark Direct, Exh UP&L 2R, Table 1, at 7. The Company contends that one-time revenues, such as $240 million from the sale of the Centralia Plant, should be deducted from the Company's revenues because they are not representative of consistent cash flow that could service the Company's debt. While it may be proper to remove one-time cash receipts when figuring the Company's cash flow, the Company's calculation also added in the same amount to the Company's debt. Exh. UP&L 2R, Table 1, footnote "a"; Tr. at 717. In addition, the Company added into its debt $310 million from the PowerCor sale, the confidential amount of the FAS 133 accounting adjustment, and the Pacific Power Marketing reverse equity infusion shown in Ms. Clark's testimony. Id.; Tr. at 717-19.

The effect of these adjustments is to vastly overstate PacifiCorp's debt for the purpose of the Company's calculation of its financial ratios. The Company's 10-K filing from March 31, 2001, shows approximately $3.2 billion in debt, Cross Exh. 18; Tr. at 725, while Ms. Clark's exhibit states the amount of debt at just over $4 billion. Exh. UP&L 2R. Moreover, in a recent Scottish Power Revolving Credit Facility document provided to banks to evaluate creditworthiness, PacifiCorp's debt is reported as $3.3 billion, an amount that correlates with PacifiCorp's 10-K, but not with the Company's supposed Standard and Poor's ratios. The difference between the amount of debt stated in the Company's ratios and these other statements

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DPU/CCS to reduce the revenue requirement.

of its debt appears to approximate the amount of cash revenue that the Company has improperly added back as debt. Cross Exh. 17,18,19.

Mr. Gorman testified that by imputing debt into the ratios, the Company has created fictitious ongoing annual obligation of the Company which it contends must be met by the Company's earnings and cash flow. The Company's ratios only appear to be eroding. When the improperly imputed debt is removed, earnings and cash flow evidently are sufficient to maintain the Company's current financial rating. Tr. 711-12.[9] The Company would have the Commission believe, for example, that debt from Centralia and PowerCor still adversely affect the Company's creditworthiness. Not only has the Company eliminated that debt, but Standard and Poor's has recognized that the Company's efforts to pay down debt from the proceeds of the sale of generation assets would have positive financial implications for the Company. Exh. DPU 12.2; Tr. at 713.

There does not appear to be any financial crisis of the magnitude that the Company claims. Recall that in the interim case, PacifiCorp testified that if it did not get the full $142 million requested, it would suffer a downgrade of its bonds. Ultimately, the Commission granted only $70 million, and the analysts nonetheless reacted favorably. Exh. UP&L 2R at 6. The Company is again crying wolf. It has simply manipulated the ratios presented in this case in an attempt to frighten the Commission into granting the full requested increase. It should be noted that if the Company does not receive its full requested increase for purchased power costs, it will

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[9] Mr. Gorman gave an example of a homeowner who sells a house and pays the mortgage before reapplying for a loan for a new home. While proceeds from the sale of the first home might not be counted as income for the purpose of determining the amount of mortgage payment that the homeowner would be able to handle, it would be improper to calculate the amount of the loan based on the mortgage for the new house with the mortgage for the old house added in. See Gorman Rebuttal Exh. UIEC ISR at 6-7. Since the first mortgage had been paid off, the debt

be because the Commission will have determined that the Company's request is in excess of its actual and/or reasonable costs. The Company seems to be setting up itself and the Commission to disappoint Wall Street when it creates expectations that it will receive a greater increase than is reasonable. The Commission should not be hostage to claims by the Company that its credit rating will suffer if the Commission does not grant the full increase.

The Commission's responsibility is to set just, reasonable and nondiscriminatory rates. Utah Code Ann. § 54-4-4. The Legislature has considered and rejected the proposition that the Commission must take into account the best interests of the utility as well as the customers in setting those rates.[10] While a financially healthy utility may benefit ratepayers, the Commission should not assume responsibility for guaranteeing its profitability. The Company will get a healthy return as well as a stipulated increase for all revenue requirement items other than purchased power costs. Order Approving Stipulation on Certain Revenue Requirement Issues, Docket No. 01-035-001. This Commission already has "stepped up to do the right thing," as the Company asked. Clark, Tr. at 739; Johansen, Tr. at 43. It is not this Commission's responsibility to ensure the Company's financial health or to ask Utahans to shoulder more than the jurisdiction's fair share of the increase.

D. <u>Assignment of Risk</u>.

The UIEC support those intervenors, including the Utah Association of Energy Users Intervention Group ("UAE") and Nucor Corporation ("Nucor"), who advocate that the Company

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no longer existed and should not be added as debt when calculating the ability of the homeowner to service the mortgage on the second home.

[10] House Bill 320, enacted in 1999 and then repealed one year later, would have required the Commission to balance the interests of consumers in obtaining service at a fair price against the utility's interest in maintaining its financial integrity. See Utah Code Ann. § 54-1-1 (would have become effective on July 1, 2001).

should absorb the economic cost associated with increased business risks resulting from PacifiCorp's wholesale marketing strategies. To the extent that PacifiCorp's decisions were made with a view toward power marketing rather than serving their utility customers, PacifiCorp should bear the risk of loss associated with those decisions. See Anderson Direct, Exh. UAE/Nucor.

A principal concern in the present case is PacifiCorp's decision to sell its plant in Centralia, Washington which occurred only one month before the sharp increase in wholesale prices. Much of the cost associated with the proposed rate increase results from that decision. The Company has tried to shift responsibility for the decision to regulatory Commissions for having approved the Centralia sale. Further, the Company has pointed to statements made by the Division of Public Utilities in which the Division advocated that much of the gain on sale from Centralia should go to ratepayers.

The Commission should not countenance the argument that because it approved the sale of Centralia the ratepayers must bear the risk of replacement power costs. Every party that participated in the Centralia docket, except the Company, opposed the sale. PacifiCorp, who was in a better position than the Division or any ratepayer advocate group to know how the sale of Centralia would impact the Company's purchased power costs, assured the Commission that the sale was in the public interest.

By the same token, the ratepayers did not accept the risk of PacifiCorp's failure to plan for replacement power simply by receiving 95% of the gain on sale from Centralia. PacifiCorp could have and should have avoided that risk altogether by taking the output of the plant at a discount rather than taking cash on the sale. Had it done so, there likely would have been no

gain on the sale, but ratepayers would have been protected against the downside of the decision to sell the plant. Instead, although it negotiated a buy-back agreement at the time of the sale for a portion of power, the Company did not adequately plan for replacement power. Apart from taking part of the output on a buy-back, the Company apparently did not even begin to negotiate contracts for the remainder of the replacement power until it had all of the regulatory approvals, several days before the sale was completed. Watters, Tr. at 380. If that is true, then the Company may simply have been negligent in arranging for replacement power. Meanwhile, PacifiCorp continued to speculate in the wholesale market, while also relying on the market to replace Centralia power. Even though the sale of Centralia had been approved by regulators, and even though the ratepayers received a credit from the gain on sale, it is not unreasonable that the Company should bear the risk of replacement power costs as a consequence of its business decisions.

Over the years, the Company has benefited immensely from its trading practices. If those practices have left it short of covering the costs of purchased power, it has always had the opportunity to come back to the Commission and seek a rate increase. But, the Company must be held responsible for marketing practices undertaken not to meet its retail and wholesale obligations, but solely to increase its profits. If during the test year, the Company had not been engaged in playing the wholesale market, it could have covered the retail load from its own generation and long-term purchases and ratepayers would have been protected against the market increases. PacifiCorp's poor business choices should not be reason to penalize the ratepayers with an increase.

CONCLUSION

The UIEC recommend that the Commission adopt its proposal to remove PacifiCorp's adjustment annualizing market prices, and reduce PacifiCorp's requested revenue requirement accordingly, but by no less than $37.7 million. In addition, the Commission should reduce PacifiCorp's requested Utah revenue requirement by no less than $16.6 million to remove the effect of market losses.

Respectfully submitted this _____ day of August, 2001.

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of August, 2001, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **POST-HEARING BRIEF OF THE UTAH INDUSTRIAL ENERGY CONSUMERS**, to:

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