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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter Of The Application of )  
PacifiCorp and Scottish Power plc ) Docket No. 98-2035-004  
for an Order Approving the Issuance )  
of PacifiCorp Common Stock )

**UTAH DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT**

**DIRECT TESTIMONY OF FRANK DAVIS**

**JUNE 29, 1999**

1 Q: Please state your name and positions previously held with Utah Power & Light  
2 Company?

3 A: My name is Frank Davis. I was previously President and Chief Executive Officer of Utah  
4 Power and Light Company. My general background is attached to this testimony as  
5 Attachment 1.

6 Q: Were you President and Chief Executive Officer of Utah Power & Light Company at the  
7 time the Company was merged into PacifiCorp?

8 A: Yes.

9 Q: What capacity are you appearing and testifying in this case?

10 A: I am appearing as a witness for the State of Utah through its Department of Community  
11 and Economic Development.

12 Q: What is your interest in the present merger proposal of Scottish Power with PacifiCorp?

13 A: First of all, it is not my intent to oppose the merger of PacifiCorp and Scottish Power.  
14 My intent is to be constructive in support of the interests of PacifiCorp, its shareholders,  
15 employees and customers. Also, I support a strong presence of Utah Power and increased  
16 support of business and economic development activities in Utah.

17 Q: Do you feel there is a potential for the economic well being of the State to be adversely  
18 effected?

19 A: Probably not if substantial cost reductions are achieved and more can be done to enhance

1 the economic well being by a strong Utah Power presence.

2 Q: Was your goal achieved in the PacifiCorp-Utah Power merger in regard to ratepayer's  
3 benefits?

4 A: Yes, the merger was a resounding success in regard to the benefits for ratepayers.

5 Q: Was the economy of the State of Utah enhanced by the PacifiCorp-Utah Power merger?

6 A: The large rate reductions, of course, had significant benefits for the overall economy of  
7 the State of Utah. However, I believe we could have done more to enhance Utah Power's  
8 presence in Utah and support Utah economic development and local businesses.

9 Historically Utah Power had a strong presence in Utah and throughout its service area  
10 with a tradition of employees contributing in public service activities. In the merger  
11 negotiations an organization was mutually agreed upon which I believed would assist in  
12 maintaining this strong presence. For example, this organization provided that the  
13 Presidents of Pacific Power and Utah Power would report to PacifiCorp together with the  
14 Presidents of the non-electric PacifiCorp subsidiaries. Organization charts were given to  
15 the Utah Public Service Commission and company employees. Over the years this  
16 organization has been modified as a part of the efforts to reduce costs. I'm sure Utah  
17 Power employees have continued the tradition in public service. I am personally aware  
18 of the efforts of Verl Topham, Fritz Reed and Tom Forsgren. However, from what I am  
19 hearing, the public perceives there is a undesirable reduction of Utah Power presence in

1 Utah.

2 In my opinion, it would be in the best interest of PacifiCorp and the proposed merger to  
3 have an increased presence of Utah Power in its service area. The strong desire of Utah  
4 citizens to have a strong Utah Power presence may not be fully understood. I am  
5 convinced of this in trying to persuade business and government people that the  
6 PacifiCorp-Utah Power merger should be supported. I think this strong desire might be  
7 best illustrated by reviewing some opinions and actions of the Utah Public Service  
8 Commission at the PacifiCorp-Utah Power merger hearings.

9 At this time they formed conditions to the merger considered in the public interest.

10 Those conditions are contained in a copy of the order of this Commission dated  
11 September 28, 1988. On page 123 of the Public Utility Reports, which sets out the  
12 Commission decision, the Commission conditioned its decision on certain conditions  
13 regarding fair treatment of employees (including a condition that promotions occur with  
14 reasonable proportionality between the Utah and Pacific Divisions). The Commission  
15 further stated "15) The Commission further expects the merged company to operate in  
16 such a way as to benefit the State of Utah, its citizens and its general economy,  
17 specifically: . . . d). Further, the Commission expects proportionate use of local  
18 businesses where appropriate and finds that applicant's commitment to promote  
19 economic development in Utah includes the assumption that a company will support the

1 industries and businesses in this State.”

2 Q: Did you testify concerning certain of these conditions?

3 A: Yes.

4 Q: Do you recall the nature of your testimony?

5 A: Yes, Attachment 2 contains my testimony and that of Mr. Bolender who was President of  
6 Pacific Power at the time, concerning the employment situation.

7 Q: Have the conditions imposed by the Commission in regard to the areas you mentioned  
8 been satisfied?

9 A: In my opinion, no.

10 In regard to employment provisions, I believe it is accurate to say that some employees  
11 were terminated in a manner contrary to the promises made by Dave Bolender and me.  
12 For this, I am deeply sorry and concerned. I expect the managers who made those  
13 personnel decisions would probably maintain that their actions were not merger related.  
14 However, this is not the Utah Power employee's perception.

15 In regard to the support for Utah businesses, from the unsolicited feedback I have  
16 received from Utah business people, it appears we could have better addressed their  
17 concerns. I have reviewed my perception of all these concerns in the hope that my  
18 observations will be received in the spirit which they are given, that is, that an objective  
19 look at the past will provide lessons to guide us in the future.

1 Q: Do you have any detail on the transfers and displacements and their effect on the  
2 economy of the State?

3 A: No. I do not have details. The direct effect on the economy of the State with job loss can  
4 be readily determined by the economists on the PSC staff. Intangible costs, such as the  
5 effects on employee morale could not be quantified.

6 Q: Do you believe the conditions in the Utah Order to which you have testified should be  
7 imposed in this merger?

8 A: I would prefer Scottish Power, PacifiCorp and appropriate representatives of the State of  
9 Utah discuss and arrive at mutually agreeable solutions to the following concerns:

- 10 1. A strong local presence of Utah Power
- 11 2. Proportionate representation from the Utah Power service area on the  
12 Scottish Power Board of Directors.
- 13 3. Increased support of business interests in the Utah Power service area.
- 14 4. Increased support of economic development in the Utah Power service  
15 area.

16 I believe it is important to fully recognize, and have solutions reflect, the change in the  
17 structure of PacifiCorp as non-electric subsidiaries are eliminated. Certainly the Utah  
18 Power service area is much more important in terms of revenue and the success of  
19 PacifiCorp than previously was the case.

1 I also believe the Commission should consider adopting procedures to assure that the  
2 agreements reached will be carried out for the economic well-being of the Utah Power  
3 service area.

4 Q: Does this conclude your testimony?

5 A: It does.

# **ATTACHMENT 1**

## **BACKGROUND OF FRANK DAVIS**

(To be submitted when Mr. Davis returns from California)



**ATTACHMENT 2**

1 against it and we were only off by a 10th or so, so  
2 we just used that number.

3 MR. MOOY: No further questions.

4 COM. STEWART: Does anyone else have any  
5 questions?

6 Thank you, Mr. Walton.

7 (Witness excused.)

8 COM. STEWART: If we could, we would like  
9 to ask both Mr. Davis and Mr. Bolender to come and  
10 sit at a table here.

11 The questions the commission will have  
12 at this point will probably be best answered by  
13 both of them so we have the perspective of both  
14 companies.

15 Mr. Galloway, do you have something that  
16 you want Mr. Bolender to do in the form of rebuttal?

17 MR. GALLOWAY: Yes, sir, just very  
18 briefly, and I'll try and speak loudly enough  
19 without the microphone.

20 DAVID BOLENDER

21 called as a witness, having been first duly sworn  
22 to tell the truth, was examined and testified  
23 further as follows:

24 //

25 //

1           SUSPENDED HEARING REBUTTAL DIRECT EXAMINATION

2           BY MR. GALLOWAY:

3           Q           Mr. Bolender, there has been discussion  
4 off and on in this proceeding about the possibility  
5 of this commission imposing additional conditions  
6 and I think the company has made its position pretty  
7 plain that it's not enthused about the prospect of  
8 additional conditions.

9                        Could you explain a little bit,  
10 particularly in relationship to some of your other  
11 constituencies on the PacifiCorp board, the Pacific  
12 Power & Light Company regulators in six states, the  
13 kinds of problems that additional conditions pose  
14 for those constituencies and for the merger itself?

15           MR. HEMPLING:   Excuse me, your Honor.  
16 I'm just wondering why this couldn't have been  
17 prefiled. This is a bit of a surprise and I'm  
18 wondering if we will have a chance to cross on this.

19           COM. STEWART:   You will. What I intend  
20 to do is go ahead and have this presented by the  
21 applicants. Then the commission will ask their  
22 series of questions and then we will allow the cross  
23 examination on anything raised.

24           THE WITNESS:   I don't know that I can  
25 explain the things that you talked about, counselor,

1 but I can give you my judgments on them. I believe  
2 the merger to be in a very fragile state at this  
3 time and I strongly urge this commission in its  
4 deliberations not to include any additional  
5 conditions on the approval.

6 I would certainly, I think it's obvious,  
7 prefer that you go back to restating your earlier  
8 order -- reinstating your earlier order. I think  
9 that those judgments are made on the basis of the  
10 fact that we have experience in six other  
11 jurisdictions with allocation processes that we  
12 believe we've been treated fairly in and we believe  
13 that there's no reason that seven states can't work  
14 under a similar allocation process.

15 Certainly some of the concerns that exist  
16 are that if additional conditions are put on the  
17 merger at this time by this commission that we will  
18 be under great risk in some of the other  
19 jurisdictions, that they also will want to look at  
20 what Utah has done, causing further delay to the  
21 merger.

22 It is my belief, as I stated in the  
23 opening, that the merger is in a very fragile state.  
24 I have sat in the board meetings and I have made  
25 presentations to the boards. There are lots of

1 groups of people that are getting weary under the  
2 process as it exists today, including the employees  
3 that have been mentioned here in this particular  
4 hearing, and it just seems to me that regulation is  
5 not going to end tomorrow or the next day or  
6 whenever an order comes out on this merger.  
7 Regulation will go on.

8 We put this merger together and I would  
9 remind you that we put the merger together on the  
10 basis of predominantly benefits to the retail  
11 customer plus shareholders over the long haul and  
12 even to employees, and we thought that we had and we  
13 think still that we have a merger agreement that  
14 makes sense for all of those constituencies.

15 We also put the merger together on the  
16 basis that we would not change any of the regulatory  
17 processes that exist. We were not looking for a  
18 change in the regulatory climate and we're more than  
19 willing to function under the existing regulatory  
20 climate that exists in each of our state  
21 jurisdictions, but that is ongoing regulation and it  
22 has reached the point with myself where I'm not sure  
23 why we have to settle as many of the things that we  
24 seem to be trying to predict out in the future. I'm  
25 a lousy predictor of the future and would like to

1 handle some of the things that have come up under  
2 the normal regulatory process where you still will  
3 certainly have a great deal to say in how that comes  
4 out.

5 I have heard in the last few days at  
6 least one deal breaker which I am very, very  
7 concerned about, and I would again urge you not to  
8 put additional conditions on this merger at this  
9 time. Thank you.

10 COM. CAMERON: Mr. Bolender, before Mr.  
11 Galloway asks additional questions, one of the  
12 concerns that I personally have is that the  
13 traditional regulation that this commission was  
14 looking at when it adopted the order was changed by  
15 the FERC order, and several of the other states to  
16 which you refer to that may want to look at what we  
17 do I believe are probably benefitted and their  
18 commissions very overjoyed with certain of the  
19 conditions because it takes away some impediments  
20 that they have perceived in the area of wheeling in  
21 the past, but in my judgment it creates a certain  
22 amount of risk additionally for Utah that wasn't  
23 there before.

24 Now, do you disagree with that? I mean,  
25 do you not think that Perry Swisher and some of the

1 Oregon and Washington and other commissioners are  
2 quite pleased with this new FERC condition requiring  
3 mandatory wheeling and almost common carriage and  
4 that sort of thing and is that not a little bit  
5 different than the regulatory climate in which Utah  
6 looked at this at first?

7 THE WITNESS: Certainly, Commissioner,  
8 the predominance of things that I have heard have  
9 been negative toward the FERC order. I can't  
10 remember hearing anybody elated at the order except  
11 perhaps for public power, but I'm not sure I know  
12 the answer to that question.

13 COM. CAMERON: You think my concerns then  
14 are probably unwarranted?

15 THE WITNESS: I hope so.

16 COM. CAMERON: Well, I hope so, too, but  
17 are they or aren't they, in your judgment?

18 THE WITNESS: In my judgment, they are  
19 unwarranted.

20 COM. BYRNE: Mr. Bolender, you just  
21 dropped an issue out there and didn't complete it.  
22 What is the one deal breaker that you've heard?

23 THE WITNESS: Well, there probably are  
24 more than one. The one that I am most concerned  
25 about is the time limit on rolled in prices on an

1 arbitrary basis.

2 COM. STEWART: For some reason I'm not  
3 surprised. Mr. Galloway?

4 MR. GALLOWAY: I have nothing further.

5 COM. CAMERON: I'll lead into the  
6 questions of both President Bolender and President  
7 Davis after making a little bit of an explanation.

8 The Utah commission may have been the  
9 only commission that imposed conditions relating to  
10 employees as it relates to this merger, at least to  
11 my knowledge. We did so in part because of the  
12 assurances made by the applicants as they presented  
13 the case to us and also in part because of many  
14 contacts, most of which are not formally on the  
15 record, I have to admit, that were made to the  
16 commission one way or another expressing great  
17 concern by employees of the current Utah Power &  
18 Light Company.

19 These came in part to the governor's  
20 office, in part to the ombudsman of the current  
21 board of directors of Utah Power & Light, in part  
22 through social contacts. I personally have been  
23 contacted by many people I don't know in the  
24 slightest who came up and expressed some great  
25 concern.



1 I have talked off the record with  
2 President Davis on several occasions about these  
3 things and received some assurances. The other  
4 commissioners have had all of the same concerns as  
5 have many, many members of our staff. I have a  
6 letter that was recently received that kind of  
7 expresses some of the concerns and I'm going to read  
8 portions of it so that you -- just as a background.

9 It states here, "A number of state  
10 commissions and even FERC have reviewed the merger  
11 in detail and, to my knowledge, only the Utah  
12 commission has recognized the efforts of the  
13 employees and provided some protection to Utah  
14 employees' jobs and ability to maintain residency in  
15 the State of Utah."

16 Skipping, the employee says, "I value  
17 both my employment and my Utah residency and very  
18 much feel concerned that this pending merger may  
19 threaten both."

20 Skipping again, "The officers of both  
21 companies still testify that money may be saved and  
22 that rates will be cut in the State of Utah. I fear  
23 the only place available for cost reduction is to  
24 eliminate Utah jobs."

25 Down at the end or near the end, "I hope

1 that your decision in the new order that you prepare  
2 will once again provide some security to Utah  
3 employees. I hope that Utah jobs will not also have  
4 to be sacrificed in order for the merger to be cost  
5 effective. Also, I hope that the security you  
6 provide for Utah jobs can legally be enforced."

7 That shows the concern of an employee and  
8 I think it's pretty general with many of the  
9 employees and many of the type of comments that  
10 we've received. I have to say personally I don't  
11 believe that it's our intention or our desire to be  
12 the management of the companies and that, while we  
13 have recognized that administrative combinations and  
14 manpower reductions are certain, amounts to benefits  
15 to this proposed merger, our primary focus and I  
16 still believe our primary reason, if we do it,  
17 continue to approve the merger, is for other  
18 reasons.

19 I hope that, in asking these questions,  
20 you will tell us if your position is different than  
21 that which we perceived it to be as we wrote our  
22 order, and I'm going specifically to our order. I  
23 don't think anything more.

24 On page 102 of the order, the commission  
25 stated in paragraph 12, "The commission approval of

1 the merger is based on our present" -- excuse me.  
2 On page 103, paragraph 13 -- excuse me again.  
3 Paragraph 14. "Both applicants have made many  
4 public statements and their officers have testified  
5 in this record that the merger is in the best  
6 interest of shareholders, ratepayers and employees  
7 of both companies."

8 "Based on these assertions, the  
9 commission has made findings and set conditions  
10 relative to ratepayers. It is also appropriate  
11 that conditions be imposed in the interest of  
12 employees (management, non-management, bargaining  
13 unit and non-bargaining unit personnel)."

14 "We find that the merger, which is in the  
15 public interest and a benefit to Utah, is made  
16 possible in part because of its employees. The  
17 lifeblood of all business and industry is the work  
18 force that dedicates its time and talent to  
19 providing the product and service to the public. It  
20 is appropriate, therefore, to add the following  
21 conditions relating to employees:"

22 A, "No person shall lose his or her job  
23 as a result of the merger."

24 Do you agree with that condition? Is  
25 that still acceptable?

1 MR. BOLENDER: I think we do agree with  
2 that statement. There is some discussion in house  
3 going on whether the word "job" means the particular  
4 assignment to which people are currently -- which  
5 people are currently in. We took the meaning of  
6 that to be employment, not what some people define  
7 more narrowly as the existing job.

8 COM. CAMERON: Do you agree with that  
9 statement, Mr. Davis?

10 MR. DAVIS: Yes.

11 COM. CAMERON: The next thing: "Work  
12 force reductions shall be a result of attrition."  
13 And this area I'm going to give what my  
14 understanding of the common view of attrition is and  
15 that's either voluntary termination, death or  
16 retirement. Do you agree that that is the way --

17 MR. DAVIS: Yes.

18 COM. CAMERON: -- that reductions will be  
19 made? Do both of you?

20 MR. BOLENDER: Yes.

21 COM. CAMERON: Item C on page 104.  
22 "Efforts will be made to retain employees in their  
23 present positions or equivalent positions at equal  
24 level and at equal pay." Do you agree with that?

25 MR. DAVIS: Yes.

1           COM. CAMERON: I believe that also adds  
2 to your understanding of condition A which I think I  
3 would have interpreted similar to the way you did  
4 but I -- that's just personal.

5           "Promotions shall occur" --

6           MR. BOLENDER: Could I add one thing to  
7 that, Commissioner?

8           COM. CAMERON: Yes

9           MR. BOLENDER: On a case by case basis,  
10 there is going to be interpretation of equal status.  
11 Certainly the equal pay is an easy one to measure.  
12 Equal status will be sometimes in the eyes of the  
13 beholder and we're going to have to take those on a  
14 case by case basis.

15           As I'm sure you're aware, the job  
16 definitions and descriptions of Pacific Power &  
17 Light are not identical with Utah Power & Light and  
18 there is going to have to be some interpretation in  
19 certain areas, but the intent of the order is clear.

20           COM. CAMERON: "Promotions shall occur  
21 with reasonable proportionality between the Utah and  
22 Pacific divisions so that employees of both systems  
23 may equally have reasonable expectations of upward  
24 mobility."

25           MR. DAVIS: Yes.

1 COM. CAMERON: Do you agree with that?

2 MR. BOLENDER: Yes, I do. I think  
3 certainly we will be looking for the most qualified  
4 people to fill job promotions in the future but we  
5 will also make an effort to make sure that they are  
6 reasonably equal in coming from both divisions.

7 COM. BYRNE: I think this is the key  
8 condition. This is the one that the employees  
9 express the most concern about in that their fear  
10 that Utah Power & Light will become a shell with  
11 enough employees to keep the electrons flowing and  
12 everyone else in Portland, and I think this is the  
13 major concern and I think the condition clearly  
14 states it and both of you have indicated that you  
15 don't believe that's going to happen.

16 MR. BOLENDER: No, I certainly don't  
17 believe that's going to happen. I would also state  
18 that the Utah order gave a great deal of concern to  
19 the Pacific Power employees who do not have any  
20 corresponding Oregon, Washington or other order, but  
21 we have reputations for over 70 years of service in  
22 both companies and have not followed practices like  
23 that and don't intend to do so in the future.

24 COM. BYRNE: I don't have the corporate  
25 tree in front of me but I recall many subsidiaries

1 of PacifiCorp. Can you tell me if all of the major  
2 subsidiaries are headquartered in Portland?

3 MR. BOLENDER: No. At least two of the  
4 major subsidiaries are headquartered in Vancouver,  
5 which is right across the river from Portland.  
6 Large segments of those companies are spread out  
7 over many of the states. Alascom, for instance,  
8 would more closely be aligned to Anchorage, Alaska  
9 than it would be to Vancouver, Washington. The  
10 actual headquarters of PTI, the telephone company,  
11 is in Vancouver, Washington. The coal company under  
12 NERCO, the coal company is headquartered in St.  
13 Louis, Missouri, although the headquarters for NERCO  
14 itself is in Vancouver.

15 COM. CAMERON: The last condition in this  
16 paragraph I don't believe anyone has any concern  
17 with, but I will state it. "Reductions in total  
18 number of employees shall not impair quality of  
19 service, maintenance and safety." I'm sure you  
20 agree with that.

21 MR. DAVIS: Yes

22 MR. BOLENDER: Yes

23 MR. DAVIS: I'll just say one thing about  
24 general reductions of employees that are not caused  
25 by the merger. I don't think we can have conditions

1 that employees may construe that there is an  
2 employment contract that would prevent loss of  
3 employment for reasons other than the merger.

4 For example, we cannot predict work load  
5 in various places. We can't predict changes in  
6 technology that would cause a different employee  
7 requirement. I believe we have the obligation as  
8 management to insist on performance to match work  
9 force with work load as we go forward, to be as  
10 efficient as we possibly can. We did not intend and  
11 I'm sure you do not intend to prevent us from doing  
12 that, and I'm sure employees, as they look at these  
13 conditions, will be reasonable, also.

14 But if, as we go forward, we can work  
15 under these conditions in a reasonable and fair  
16 way, I believe we will be successful, and that  
17 common goal should be a common goal of the  
18 regulators, the management and the employees of the  
19 company.

20 COM. STEWART: Mr. Davis, I think you  
21 state the position of the commission correctly, that  
22 we recognize that you are the managers of the  
23 company and will continue to be so. One thing that  
24 we have already discussed among ourselves that we  
25 fear is that we're going to be a quasi workmen's



1 compensation, you know, whatever, board, and we're  
2 going to, over the next few years, be hearing all  
3 kinds of cases of employees who assert that they  
4 have been fired in contravention of our order and we  
5 end up hearing those time and again, and I hope that  
6 somehow or another we're going to be able to come up  
7 with a solution so that this commission does not  
8 personally have to do that, but we are committed to  
9 the literal terms of this order in terms of what  
10 attrition is.

11 I think we all agree with Commissioner  
12 Cameron's assertion of what our interpretation of  
13 the word attrition is and if you're to come up with  
14 a policy that violated that that gave it a broad  
15 meaning that gave you the flexibility to make  
16 changes that we think are out of line with our  
17 order, this commission will be most upset about it.

18 MR. BOLENDER: Could I make one  
19 correction? It's not important but I believe I  
20 misspoke on the NERCO headquarters. NERCO's oil and  
21 gas division, minerals oil and gas division is  
22 headquartered in Vancouver. The total corporate  
23 headquarters for NERCO, I believe, are still in  
24 downtown Portland.

25 COM. CAMERON: Paragraph 15 states, "The

1 commission further expects the merged company to  
2 operate in such a way as to benefit the State of  
3 Utah, its citizens and its general economy."

4 "We expect the merged company to maintain  
5 the currently existing proportionate levels of  
6 employment between the Utah Division and Pacific  
7 Division. That is, it is required that as the  
8 transition of the merged entities occurs, neither  
9 the Utah Division nor the Pacific Division shall be  
10 assigned a greater number of utility, management or  
11 corporate functions, or employees, than currently  
12 exists in such division vis-a-vis the other  
13 division."

14 "It is intended by this expectation that  
15 after the anticipated merger of administrative and  
16 operational functions takes place, and subject to  
17 the expected reduction in work force via attrition,  
18 that the respective divisions will find themselves  
19 with approximately the same level of functional  
20 importance in the total corporate structure as  
21 currently exists between the two.

22 COM. BYRNE: That's the Utah commission's  
23 protection of the PP&L workers that the Oregon  
24 commission didn't put in their order.

25 COM. STEWART: Perhaps unintended, but --

1 MR. BOLENDER: I would only add one known  
2 exception to that which I do not think violates the  
3 intent and that is it's been known here and  
4 testified to publicly a couple of times that we do  
5 intend to move the power supply division, the public  
6 supply group to headquarters in Salt Lake City.  
7 That's probably the most major move of a function  
8 from one division to another.

9 COM. STEWART: How many employees are  
10 involved in that move?

11 MR. BOLENDER: We're not sure yet, Mr.  
12 Chairman. I expect, and this is a wild guess,  
13 perhaps 50.

14 COM. BYRNE: It certainly wasn't the  
15 commission's intent that that sort of thing be  
16 precluded. We have complaints from various  
17 employees in various categories that are afraid  
18 their function is going to be shifted to Portland  
19 and I don't think it was the intent of the  
20 commission order to preclude that. What we're  
21 looking for is some reasonable balance.

22 COM. CAMERON: We don't want all  
23 management to be leaving this area and I think that  
24 that's clear and I think the intent that you've  
25 given us is that that won't occur.

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MR. BOLENDER: That's correct.

COM. CAMERON: Subsection B under paragraph 15 states, "Further, the commission relies upon the testimony of President Bolender and President Davis with respect to the compassion and reasonableness that will be shown to employees as new assignments are made. We expect that if the transfer of a certain function out of state is required, that every effort will be made to ensure alternative equivalent employment in state for those employees who do not wish to relocate."

Is that acceptable?

MR. DAVIS: Yes. We believe that with or without this requirement that every effort would be made to do this, but as I stated in my letter to the governor, and you have a copy of that, we have to have sufficient flexibility as attrition occurs, wherever that attrition occurs, to try to fill those positions from other positions that are made unnecessary due to the economies of scale that we perceive.

So we expect to have some employees that will move from one place to another in order to fill those positions, but certainly we do not want to make these moves, both from a -- trying to be as

1 compassionate and considerate as we can from the  
2 employee's standpoint and also from an economic  
3 standpoint. We don't want to make any of those  
4 moves that are not absolutely necessary and we will  
5 make every effort to do that, but we think that some  
6 of those moves simply will have to be made in order  
7 to fill these positions and get those economies of  
8 scale that we perceive.

9 Now, I don't know how to make it any  
10 clearer than that. We'll have to look at it on a  
11 case by case basis and we will comply with every  
12 effort, condition that you have put forward here in  
13 a fair and reasonable manner.

14 COM. CAMERON: I might state that this  
15 last paragraph of expectations of the commission  
16 is not stated as affirmatively as the paragraph  
17 prior which were specifically conditions. I  
18 believe, as we drafted these, we looked specifically  
19 at language given in the testimony of one of the  
20 other of you two and most of the language herein is  
21 very, very close to that which you expressed in  
22 direct testimony upon the record at an earlier time  
23 and that's why I'm just asking for assurances.

24 I'm asking for assurances because, as I  
25 stated before, we have had, particularly since the

1 FERC order, a great number of concerned inquiries on  
2 these issues, but I'll move on to the next one at  
3 this time.

4 "We further expect that the merged  
5 company will be reasonable in its relocation  
6 policies, i.e., assistance for home sales, moving  
7 allowances, etc. for those employees who are forced  
8 to relocate." That is a normal corporate practice.  
9 We are presuming you would do the same and I believe  
10 you have so stated.

11 MR. DAVIS: Yes.

12 MR. BOLENDER: Yes.

13 COM. CAMERON: "Further, the commission  
14 expects proportionate use of local businesses where  
15 appropriate and finds that Applicant's commitment to  
16 promote economic development in Utah includes the  
17 assumption that the company will support the  
18 industries and businesses of this state."

19 MR. DAVIS: Yes.

20 MR. BOLENDER: Yes again.

21 COM. CAMERON: "Further, as testified to  
22 in the hearing, the commission expects support of  
23 the local community by the merged company and that  
24 the company will be as good a corporate citizen  
25 under the merger as it has been in the past."

1 "Again, the commission expects  
2 proportionate community type responsiveness in the  
3 Utah areas to those of other areas in PacifiCorp."  
4 And as an aside, I believe President Bolender stated  
5 that they were more generous in their contributions  
6 to local entities than even you were, Mr. Davis.

7 MR. DAVIS: Yes. I might indicate that,  
8 though we have been, as you know, under tremendous  
9 incentives to reduce our costs in this regard, we  
10 have actually budgeted some increases in spite of  
11 that.

12 COM. CAMERON: Governor Rampton probably  
13 represents some civic group that would like to get  
14 their hands on just a little of that, I'm sure.

15 Do you agree with that as well, Mr.  
16 Bolender?

17 MR. BOLENDER: Yes, I do.

18 COM. CAMERON: "Further, the commission  
19 expects that Utah will be represented on the  
20 PacifiCorp board in rough percentages to the area of  
21 business which it provides to the overall company."

22 This board membership issue is one which  
23 came up at certain times. Different numbers were  
24 passed around as to how many people may or may not  
25 be, but I believe your commitment was to work

1 towards that end; is that correct?

2 MR. BOLENDER: That's correct.

3 COM. CAMERON: "Finally, the commission  
4 expects notification by the company of any action  
5 which is contrary to these expectations prior, and  
6 with sufficient time for commission action, if  
7 necessary, to their implementation."

8 This is an affirmative obligation that  
9 we're placing on the merged company to notify us if  
10 you plan to go contrary to these and come up with  
11 your reasons so that we may look at it at that time.  
12 Is that acceptable?

13 MR. DAVIS: Yes

14 MR. BOLENDER: We certainly agree.

15 COM. CAMERON: The one area that  
16 Commissioner Stewart mentioned that we haven't  
17 thought about too much is whether or not by our  
18 imposing some of these conditions we're imposing a  
19 work load on the commission and upon the company  
20 which is unreasonable. We're thinking or I have  
21 thought about the possibility of suggesting an  
22 arbitrator to first deal with these type of things  
23 and then present reports, first to the boards and/or  
24 to the employee organization of the companies, and  
25 finally, if necessary, to the commission as to



1 compliance with these conditions. That would be an  
2 independent individual just to try and alleviate  
3 problems. Would that be something which is  
4 acceptable?

5 MR. BOLENDER: I'm not sure that I know  
6 enough about which boards and other legal groups in  
7 my own states or in Utah have cognizance over some  
8 of these matters, but the usual labor relations  
9 activities, I would think that probably there are  
10 other groups already set up, workmen's comp or other  
11 places in government that we could go to to resolve  
12 some of those issues.

13 COM. STEWART: I think what Commissioner  
14 Cameron is talking about, and this is the very kind  
15 of thing that I think -- I think his suggestion is  
16 an excellent one. I think that what we have created  
17 here is an entirely new set of possible employer-  
18 employee problems. I don't think standard legal --  
19 or state law deals with them and what we have said  
20 in effect is if an employee is released and that  
21 employee wants to come and say, "I've been released  
22 unjustifiably because of the merger," then I think  
23 we as a commission, or as Commissioner Cameron has  
24 suggested, an arbitrator appointed by the commission  
25 are the only ones that could hear those matters and,

1 if that is true, would the company be willing to  
2 support us if we were to go that route?

3 COM. BYRNE: I guess --

4 COM. STEWART: Otherwise you're going to  
5 have a full hearing on this thing every time an  
6 employee has a problem. If you want to bring Mr.  
7 Galloway or Mr. Forsgren in here --

8 COM. BYRNE: I guess I don't see it that  
9 way, that we would deal with individual problems. I  
10 think the intent of our order, at least as I signed  
11 it, was to deal with trends and I don't think we  
12 ought to be involved in individual cases. I think  
13 Mr. Davis just indicated there will be times when  
14 there may be circumstances where employees will find  
15 that all jobs of an equivalent nature are in the  
16 other jurisdiction or division and I'd hate to see  
17 us involved in individual cases. I think what we're  
18 concerned about is the overall trend and we'd ask  
19 the division to look into those trends if there was  
20 reasonable cause to do so.

21 MR. BOLENDER: I certainly prefer  
22 Commissioner Byrne's --

23 COM. STEWART: Well, I disagree with him.  
24 I think that he's wrong on what we're going to end  
25 up doing here.

1                   COM. CAMERON: I don't think this is  
2 something the -- we really haven't discussed it. I  
3 was just free associating here a little bit.

4                   We, in other cases I think specifically  
5 have the use of an arbitrator between the cities and  
6 the company. In the area of the CP National case we  
7 just selected an individual who tried to work out  
8 some of the problems before it became a formalized  
9 problem and whether or not that type of thing will  
10 work or whether or not there's some agency that  
11 already has the capability of doing it, we'll think  
12 about it. I don't think that that needs to be  
13 discussed anymore.

14                  COM. STEWART: Maybe it's possible that  
15 you're going to have all of these things so totally  
16 artfully that these things will never arise.

17                  COM. CAMERON: I think we have done now  
18 everything we can to protect the employees.

19                  COM. STEWART: Does anyone have any cross  
20 examination on anything?

21                  COM. BYRNE: I would just, before we do  
22 that, urge that the companies make a transcript  
23 available, to employees if they want to peruse it  
24 and file them in your normal newsletter.

25                  COM. STEWART: Mr. Hempling?

1                    SUSPENDED HEARING REBUTTAL CROSS EXAMINATION

2                    BY MR. HEMPLING:

3                    Q            Good morning, Mr. Bolender.

4                    A            Good morning.

5                    Q            Just two questions. You stated that  
6 because the merger situation is fragile that this  
7 commission should add no more conditions. Was that  
8 your testimony?

9                    A            Yes, it is.

10                   Q            Now, would you assume with me for a  
11 moment that this commission determined based on  
12 regulatory principles embodied in the laws of this  
13 state that additional conditions were necessary.  
14 You're not jettison to those principles on the  
15 grounds that the merger is fragile, are you?

16                   A            Not on the basis that the merger is  
17 fragile, but I believe our case as put forth showed  
18 that there were -- that the FERC order, which was  
19 what this particular hearing was to be limited to,  
20 the effect of the FERC order is such that we think  
21 the overall benefits of the rest of the merger are  
22 large enough that we should accept the conditions as  
23 FERC has outlined them.

24                   MR. HEMPLING: No further questions.

25                   Thank you.

1 COM. STEWART: Anyone else? Mr. Hurwitz?  
2 MR. HURWITZ: I also have a very brief  
3 line.

4 SUSPENDED HEARING REBUTTAL CROSS EXAMINATION

5 BY MR. HURWITZ:

6 Q Good morning, Mr. Bolender.

7 A Good morning.

8 Q At some moment in history the applicants  
9 promised successive two and three rate reductions in  
10 the Utah jurisdiction, isn't that true?

11 A Yes. That's one way to put it.

12 Q And at some other time the applicants  
13 offered that rates would be stabilized in the  
14 Pacific jurisdictions?

15 A That's also correct.

16 Q Subsequent to that commitment having been  
17 made in the Pacific jurisdictions, isn't it true  
18 that other Pacific jurisdictions have expropriated,  
19 if you will, additional benefits to be flowed  
20 through in the first post merger rate case?

21 A Any additional benefits to be flowed  
22 through in future rate cases will be dependent upon  
23 how those future rate cases come out.

24 Q Well, in the Oregon jurisdiction, for  
25 example, did not the commission require the

1 applicants to flow through a specific dollar amount  
2 of merger benefits specifically derived from  
3 applicant's, Mr. Reed's, exhibits be flowed through  
4 in the first post merger rate case?

5 A I'm not sure I can answer that. I don't  
6 know.

7 Q Are there any other jurisdictions which,  
8 to your knowledge, additional conceptions were made  
9 beyond the commitment that rates would be  
10 stabilized?

11 A I think there were other conditions that  
12 were added in some of the other states; yes, I do.

13 Q Do any of those conditions that were  
14 adopted by other states amount to additional rate  
15 concessions, in your view?

16 A I'm not sure of that. I'd have to review  
17 those.

18 Q So you're saying that those orders will  
19 speak for themselves?

20 A Yes, indeed.

21 Q But your recollection generally is that  
22 there were concessions embodied in those orders  
23 going beyond the promise in the Pacific jurisdiction  
24 to stabilize rates?

25 A There were other concessions, yes.

1 MR. HURWITZ: That's all I have, your  
2 Honors. Thank you.

3 COM. STEWART: Anyone else? Mr. Mooy?

4 SUSPENDED HEARING REBUTTAL CROSS EXAMINATION

5 BY MR. MOOY:

6 Q I just have one question for Mr. Bolender  
7 as he's the one who identified the deal breaker.

8 Mr. Bolender, there was the deal breaker  
9 which you identified suggested by the Committee of  
10 Consumer Services and the aspect you identified was  
11 the arbitrary, in your terms, ten year nature of  
12 requiring rolled in prices to be achieved in that  
13 time period.

14 There was also a suggestion from another  
15 participant in this hearing to require the company  
16 in this jurisdiction, much like FERC is required, to  
17 make an affirmative case in its first filing before  
18 this jurisdiction to suggest what the company feels  
19 is the appropriate time period for rolled in rates  
20 and to provide filing information thereafter to  
21 track whether the proposal is occurring as  
22 necessary. Is that also a deal breaker?

23 A I'd prefer not to go on beyond deal  
24 makers -- deal breakers. Excuse me. I am not a  
25 deal breaker. I would present to my board of

1 directors opinions on whether or not -- or judgments  
2 on whether or not we should continue, but actually  
3 I believe I prefaced my remarks that in my judgment  
4 this might be a deal breaker.

5 Q I'm asking, in your judgment, about the  
6 other condition that's been proposed.

7 A I'm not sure.

8 MR. MOOY: I have no further questions.

9 COM. STEWART: Thank you. We'll take a  
10 brief recess and come back and commence with the  
11 oral argument and we'll begin that with the  
12 applicants.

13 (Recess 11:40 a.m.)

14 (Reconvene 11:55 a.m.)

15 COM. STEWART: Let's go back on the  
16 record.

17 Mr. Galloway?

18 MR. GALLOWAY: Thank you, Mr. Chairman.

19 For a good number of months I've been assuring  
20 Jeanne Wride as I bought coffee that I would not any  
21 longer darken the door and she has consistently told  
22 me that in fact I'd be back.

23 COM. STEWART: We appreciate your  
24 business.

25 MR. GALLOWAY: It has caused me to