

1 BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

2

3

4

5

_____)
In the Matter of the) DOCKET NUMBER:
6 Application of PACIFICORP and) 98-2035-04
SCOTTISH POWER plc for an)
7 Order Approving the Issuance) REPORTER'S TRANSCRIPT
of PacifiCorp Common Stock.) OF PROCEEDINGS
8 _____)

 Salt Lake City, Utah

9

 April 2, 1999

10

 9:00 a.m.

11

12 BEFORE:

13 STEPHEN F. MECHAM, Chairman, Public Service

14 Commission of Utah; and

15 CONSTANCE B. WHITE, Commissioner, Public

16 Service Commission of Utah; and

17 CLARK D. JONES, Commissioner, Public

18 Service Commission of Utah.

19

20

21

22

23

24

25

1 APPEARANCES

2 FOR DPU: Michael Ginsberg
Assistant Attorney General
3 500 Heber Wells Building
163 East 300 South
4 Salt Lake City, UT 84114

5 FOR CCS: Douglas Tingey
Assistant Attorney General
6 500 Heber Wells Building
163 East 300 South
7 Salt Lake City, UT 84114

8 FOR PACIFICORP: Edward Hunter
Attorney at Law
9 STOEL, RIVES
Suite 1100
10 201 South Main
Salt Lake City, UT 84111

11 FOR SCOTTISH POWER: Brian Burnett
Attorney at Law
12 CALLISTER, NEBEKER
13 & MCCULLOUGH
900 Gateway East Building
14 10 East South Temple
Salt Lake City, UT 84113

15 FOR UIEC: F. Robert Reeder
Attorney at Law
16 PARSONS, BEHLE & LATIMER
17 1800 Utah One Center
201 South Main
18 Salt Lake City, UT 84111

19 FOR LARGE CUSTOMERS: Gary A. Dodge
Attorney at Law

20 PARR, WADDOUPS, BROWN, GEE
21 & LOVELESS
22 Suite 1300
23 185 South State Street
24 Salt Lake City, UT 84111

23

24 (continued)

25

1 APPEARANCES (CONTINUED)

2 FOR EMERY COUNTY: Bill Thomas Peters
3 Attorney at Law
4 Suite 700
185 South State Street
Salt Lake City, UT 84111

5 FOR UAMPS: Matthew F. McNulty III
6 Attorney at Law
VAN COTT, BAGLEY, CORNWALL
& MCCARTHY
7 1600 Key Bank Tower
50 South Main Street
8 Salt Lake City, UT 84144

9 FOR THE UTAH Steven W. Allred
LEAGUE OF CITIES Attorney at Law
10 AND TOWNS: Law Department
Salt Lake City Corporation
11 Suite 505
451 South State Street
12 Salt Lake City, UT 84111

13 FOR THE DEPARTMENT Brian Farr
OF COMMUNITY AND Assistant Attorney General
14 ECONOMIC DEVELOPMENT: 500 Heber Wells Building
163 East 300 South
15 Salt Lake City, UT 84114

16 FOR DESERET GENERATION David F. Crabtree
TRANSMISSION AND General Counsel
17 MEMBER COOPERATIVE: 5295 Commerce Drive #500
Murray, UT 84107-5378

18 FOR LAND AND WATER Joro Walker
19 FUND OF THE ROCKIES: Attorney at Law
165 South Main Street

20

Salt Lake City, UT 84111

21

22

23

24

25

1 April 2, 1999 9:00 a.m.

2

3 PROCEEDINGS

4

5 CHAIRMAN MECHAM: Let's go on the record in
6 Docket Number 98-2035-04 entitled in the matter of
7 the application of PacifiCorp and Scottish Power PLC
8 for an order approving issuance of PacifiCorp common
9 stock. Let's take appearances for the record.

10 MR. HUNTER: Edward Hunter for PacifiCorp.

11 MR. BURNETT: Brian Burnett for Scottish
12 Power.

13 MR. PETERS: Bill Thomas Peters for Emery
14 County.

15 MR. GINSBERG: Michael Ginsberg for the
16 Division of Public Utilities.

17 MR. TINGEY: Doug Tingey for the Committee
18 of Consumer Services.

19 MR. FARR: Brian Farr for the Department of

20 Community and Economic Development.

21 MR. REEDER: Robert Reeder for UIEC.

22 MR. DODGE: Gary Dodge for the Large

23 Customer Group.

24 MR. ALLRED: Steven Allred for League of

25 Cities of and Towns.

1 MR. MCNULTY: Matthew McNulty for UAMPS.

2 MR. CRABTREE: David Crabtree for Deseret
3 Generation Transmission and Member Cooperatives.

4 MS. WALKER: Joro Walker for the Land and
5 Water Fund.

6 CHAIRMAN MECHAM: Anyone else? Thank you.
7 I presume that all of you received copies of the
8 Committee of Consumer Services's Statement of
9 Additional Issues and also that of LCG and UIEC?
10 Okay.

11 MR. GINSBERG: I actually don't have a copy
12 of the Industrial's, if they have an extra.

13 CHAIRMAN MECHAM: I also assume as well
14 that each of you got a copy of the memorandum we
15 issued on March 31st, either by e-mail or otherwise.

16 MR. REEDER: There is an exception noted.
17 I think I'm on the service list, but we did not
18 receive it.

19 CHAIRMAN MECHAM: Do we have an e-mail

20 address for you?

21 MR. REEDER: You do. I get your orders.

22 For some reason, I don't get your memoranda. I'd be
23 pleased to accept the memoranda and forego some of
24 the orders, if we can arrange that.

25 (Laughter.)

1 CHAIRMAN MECHAM: Perhaps, before you
2 leave, we can make sure we have your e-mail address.

3 Mr. Allred?

4 MR. ALLRED: I didn't get an e-mail either.

5 MS. WALKER: I didn't either.

6 CHAIRMAN MECHAM: Now, you -- I know that
7 we sent something to the LAW Fund. I'd have to defer
8 to Ms. Orchard.

9 MS. WALKER: To Boulder?

10 MS. ORCHARD: Not to Boulder.

11 CHAIRMAN MECHAM: Let's do this: Before
12 you leave today, can you just make sure that Ms.

13 Orchard has your e-mail addresses? Because I'm sure

14 we'll communicate in the future that way as well.

15 It's fast and easy.

16 So does that mean that we have to forego your
17 wisdom today, Mr. Reeder, on some of the points we
18 raised in that memo?

19 MR. REEDER: I can read quickly.

20 CHAIRMAN MECHAM: Okay. Were there any
21 questions about that memorandum?

22 MR. GINSBERG: It was unclear from our
23 perspective what you wanted done at the hearing today
24 with respect to the areas where you said you wanted
25 comment. Whether you expected some -- something

1 other than a general discussion among the parties or
2 what you actually expected to happen today.

3 CHAIRMAN MECHAM: Well, given that -- I
4 mean, in essence, those of you who did get it had
5 perhaps one full day to contemplate some of the
6 things that we addressed there. And we characterized
7 what you would give us as preliminarily. I mean,
8 things like what findings you may think are
9 necessary.

10 I mean, perhaps you've given that some
11 thought before yesterday. But we're sure to talk
12 about that before we leave today. We understand that
13 it may not be the final analysis. But it's at least
14 a start.

15 MR. ALLRED: Mr. Chair?

16 CHAIRMAN MECHAM: Mr. Allred.

17 MR. ALLRED: Is it your intent at this time
18 to take comment about issues that were not included
19 in there that we believe have been raised?

20 CHAIRMAN MECHAM: Sure.

21 MR. ALLRED: We believe that Number 2 of

22 our issue statement regarding sale determination --

23 Number 2 of the League of Cities and Town's Statement

24 of Issues we don't believe is included. That is, the

25 issue regarding municipal self-determination

1 regarding the distribution system.

2 CHAIRMAN MECHAM: Actually, I'm not putting
3 my finger immediately on your statement. For my
4 benefit, could you restate that? Not exactly what
5 you just said, but elaborate a little bit about the
6 issue?

7 MR. ALLRED: The League of Cities and Towns
8 originally was predisposed to suggest there should be
9 a CP National element to this; that is, there would
10 be the option to purchase certain elements of the
11 merged company.

12 Through discussions with the applicants, we
13 made a conscious decision that we wanted to review
14 other options short of actual acquisition of title.
15 And are, in fact, engaging in discussions with them
16 in the hopes of reaching an MOU in the near future.

17 But to the extent we are not able to achieve
18 that by agreement, we anticipate that the issues
19 would be dealt with in terms of this proceeding.

20 CHAIRMAN MECHAM: Okay. We'll have to
21 review the compilation of issues that we issued. And
22 to the degree that's not reflected, we'll add it.

23 Now, I understand -- because I have sort of
24 heard off the record some statements about how broad
25 these issues are. I mean, I'll only speak for

1 myself. I don't think that the merger is going to
2 hinge on some of these issues that we've left, for
3 our purposes, alive now.

4 As the memorandum states, we'll allow parties
5 to file direct testimony, and I suppose at that time
6 make some judgment as to whether or not they're,
7 number one, relevant; or, number two, necessary to
8 consider as core issues. I mean, they're just not
9 all core issues. But that is a personal statement,
10 not a Commission statement.

11 So we'll add that to the list and treat it as
12 we said we would treat all issues; that is, give the
13 opportunity for people to argue why they are relevant
14 and important to the process.

15 MR. ALLRED: May I comment?

16 CHAIRMAN MECHAM: Of course.

17 MR. ALLRED: I would suggest that in terms
18 of the positive benefit test in the context of this
19 merger, it is absolutely essential to determine

20 whether or not there are other alternatives that
21 provide an equal or greater positive benefit. And I
22 think that would be the context with which we would
23 raise the self-determination issues.

24 CHAIRMAN MECHAM: And that's one of the
25 reasons that we're going to allow you to raise it

1 that way in your first round of testimony.

2 MR. ALLRED: Thank you.

3 MR. HUNTER: Mr. Chairman, could we address
4 that portion of the order briefly?

5 CHAIRMAN MECHAM: Go ahead.

6 MR. HUNTER: Obviously, the Commission
7 doesn't think it has a sufficient record to make a
8 determination about whether or not some of these
9 issues are relevant. We have several practical
10 problems, though, that maybe there's another way
11 around.

12 The Commission I don't think is going to
13 avoid having a case-by-case determination of the
14 relevancy of these issues in the relatively
15 short-term future.

16 Every time a discovery request comes in,
17 we've had a couple of discovery requests that
18 essentially ask us essay questions on how we feel
19 about competition. We're objecting to those

20 questions. I assume those questions will end up
21 before the Commission, asking the Commission to force
22 us to answer them.

23 Relevance isn't going to go away as an issue,
24 and it's not going to wait until June 18.

25 What we would suggest is the Commission

1 provide parties the opportunity to file, as we did in
2 the last merger, a statement that identifies that
3 nexus that Mr. Dodge talked about last time where --
4 I can't remember what you referred to it as in your
5 statement. Something similar to that. Whether it's
6 germane to the proceeding.

7 And also identify what relief they want.
8 With that kind of information before the Commission,
9 then you can make a determination, and we can proceed
10 on.

11 These kind of decisions, as this Commission
12 knows, are made on a routine basis before both this
13 Commission and courts. Usually they're based on
14 legal argument. Is it relevant or is it not
15 relevant? And we're not asking the Commission to
16 look at the broad scope of all the issues that were
17 raised.

18 We'd request, though, that the Commission
19 look at things like competition, deregulation.

20 Deregulation we're under the impression is an issue
21 that's been before the Legislature for three years.
22 RTOs, for example, are something that was brought up
23 before the Legislature. The Legislature so far has
24 declined to determine whether or not that's an
25 appropriate step to take in the state of Utah.

1 If someone would identify for us why those
2 are issues in this proceeding, that would be helpful
3 for this process, and we think that should happen
4 relatively quickly.

5 The other problem we have is the burden. The
6 Commission is adequately -- quoted the last order in
7 which they stated that we don't have the burden on
8 issues that aren't within your regulatory
9 jurisdiction.

10 The last order, however, identified areas in
11 which the Commission had already determined that to
12 be true. Impact on coal employment, impact on coal
13 mines, anti-trust issues.

14 If the Commission could give us some
15 indication within those kind of broad areas whether
16 or not you think those are areas on which we have the
17 burden, that would be very helpful.

18 I assume nobody is prepared today to go
19 through the list of issues the Commission has

20 attached and tell us which we do and do not have the
21 burden on. But we do need that kind of information.

22 MR. GINSBERG: Are you prepared to do that?

23 MR. HUNTER: I think you can already tell
24 from the argument we made on March 5th, and we can go
25 through that argument again, that we don't think the

1 issues that deal with deregulation, competition,
2 municipal annexation, municipal self-determination,
3 are issues on which we have the burden or issues
4 within the Commission's jurisdiction.

5 MR. GINSBERG: But everything else that
6 would be on that list that the Commission put
7 together --

8 MR. HUNTER: We can go through it. For
9 example, employment issues. I don't know whether or
10 not the Commission believes that hiring and firing of
11 employees at the local utility is within their
12 jurisdiction.

13 MR. BURNETT: If I might just add to what
14 Mr. Hunter has reiterated, I did have a chance to
15 glance at the Utah Rules of Evidence today, and I
16 recognize you're not bound by those. But I think
17 they are helpful in at least guiding the Commission
18 on making decisions regarding evidence that is
19 relevant to a proceeding.

20 Section 401, Rule 401, relevant evidence
21 means evidence having any tendency to make the
22 existence of any fact that is of consequence to the
23 determination of the action more probable or less
24 probable than it would be without the evidence.

25 Now, I know the Commission is troubled by the

1 fact that you haven't had direct evidence filed on
2 this. And perhaps that only attorneys are making
3 these arguments. But that is, as Mr. Hunter
4 reiterated, the essence of what is usually required
5 of a judge or a Commission to determine.

6 In view of the fact that the Commission has
7 itself, for example, in the restructuring
8 deregulation arena started a case in 1995, had
9 extensive task forces and studies and the Legislature
10 has looked at that, had task forces and studies -- I
11 thought about bringing just a copy of all those
12 documents, but I didn't want to get a dolly out to
13 bring it over.

14 And we think that it's just not judicially
15 economic or good use of our resources here to reopen
16 that issue, have people do discovery on it, which
17 they're doing, have people hire expert witnesses,
18 file testimony on it, only at a very late date to
19 decide whether or not it's relevant to the

20 proceeding. We don't think it is. And we've made

21 that pitch.

22 There are other issues we don't think are

23 relevant. But we think it would make more sense to

24 make those determinations now as opposed to letting

25 people spend time and money and resources and effort

1 and give people the impression they're going to be
2 considered. Because I don't think they should be
3 considered, and I'm hoping the Commission would agree
4 with us on that issue.

5 We just think it's better to make those
6 decisions more on the front end of things rather than
7 expand the proceeding to something and the issue not
8 become. Because we think we should continue to focus
9 on the transaction.

10 Is the transaction between Scottish Power and
11 PacifiCorp a good idea? Is it in the public
12 interest? Are there net positive benefits? We think
13 we've put a prima facie case on that, and we think
14 that should be the focus. Not whether or not we
15 should be deregulated. Thank you.

16 CHAIRMAN MECHAM: So what kind of a time
17 frame are you talking about, Mr. Hunter?

18 MR. HUNTER: We don't want -- we think that
19 after three months, people probably have a pretty

20 good idea of what they think the nexus is and what

21 relief they're looking for.

22 I assume parties can do it in several weeks.

23 If they need more time than that, then we're not

24 opposed to that. We'd just to get it done before

25 June 18th and at least done before the next month.

1 CHAIRMAN MECHAM: What's the reaction of
2 the parties to that?

3 MR. GINSBERG: I think from our
4 perspective, we had no objection, at least on the
5 issues that I know that he's referring to, of that
6 being done, if possible at this point.

7 CHAIRMAN MECHAM: You mean in the next few
8 weeks?

9 MR. GINSBERG: If possible. I don't know
10 whether that would be something -- the way you've
11 done your order is that they -- at least, I would
12 view it, at least the issues that seem to be the ones
13 that we're talking about, which are restructuring and
14 municipalization and the CP National kind of
15 standards, that that party who presents the testimony
16 on the 18th has the -- has to show how its rule fits
17 in with this type of proceeding. And I guess what
18 you're asking that to be done would be done at an
19 earlier stage.

20 CHAIRMAN MECHAM: I'm not asking it; Mr.

21 Hunter is.

22 MR. DODGE: Mr. Chairman, if I may.

23 CHAIRMAN MECHAM: Mr. Dodge.

24 MR. DODGE: Counsel have alluded to the

25 court process in bringing motions to determine

1 relevancy and the like. And if they want to proceed
2 that way, let them proceed that way. The motion can
3 be brought before you on a motion to compel; if they
4 believe an issue is irrelevant, they can refuse to
5 answer it.

6 And a party who thinks that it is relevant,
7 and that they need that data, or that information, in
8 order to demonstrate it, can bring a motion to
9 compel, come before this Commission, make its
10 arguments for why it's relevant or not, and you can
11 make a determination on a case-by-case basis.

12 It makes no sense to make everybody submit
13 nexus arguments on everything in here when most of
14 them are admittedly relevant to the case.

15 The second way it can come up is to have
16 PacifiCorp or Scottish Power to file a motion. If
17 they believe that as a matter of law, certain issues
18 can't even be considered by this Commission in the
19 context of the merger, they have the burden of

20 bringing that before the Commission, making their
21 arguments, letting parties respond, and then going to
22 hearing on it. It sounds like there are only a few
23 issues like that.

24 But I submit the burden is by those who want
25 to push the issue, either by requesting discovery or

1 force the issue out.

2 MR. GINSBERG: I do agree with Mr. Dodge on
3 that. That this shouldn't turn into just a
4 general -- where everybody has to file some document
5 showing the nexus of issues they've raised. And I
6 think that the burden should rest, if we're going to
7 have this kind, with PacifiCorp, to raise clearly
8 what issues are now potentially being raised that
9 they think are not relevant to this proceeding.

10 MR. BURNETT: We did spend a fair amount of
11 time in the last hearing discussing why we thought
12 certain issues were not relevant, which we thought
13 was the purpose of that hearing. We've made our
14 arguments. And we were hoping the Commission would
15 make a determination of those particular issues and
16 narrowly focus the proceeding to what we think is
17 relevant.

18 We think we've made the motions in a hearing
19 that was publicly noticed, giving everybody an

20 opportunity to participate.

21 MR. GINSBERG: I guess --

22 MR. BURNETT: I don't think we need any

23 more notification obligations or burden than we have

24 currently demonstrated.

25 MR. GINSBERG: Maybe that's really what's

1 happened. What more would there be that's said?
2 They're saying they have nothing more they would say
3 on municipalization and maybe restructuring, and what
4 discussion there was of it occurred at the last
5 hearing.

6 If the Commission would just make the
7 decision that at least from your perspective, the
8 best way to proceed is let the direct evidence be
9 presented on those and then deal with it at that
10 point, then maybe we'd all just have -- it would be a
11 waste of time to do it now.

12 MR. HUNTER: The waste of time argument is
13 the entire point. If you wait until June 18th, we
14 have July 16th to file testimony, then we go to
15 hearing in August. During that several-month period,
16 we have to make a determination sometime after June
17 18th, presumably, as to whether or not the issues are
18 relevant; how they will be addressed; who has the
19 burden to address them.

20 We just submit that those are decisions that
21 could be made appropriately earlier in the process.
22 They can be done without imposing a tremendous burden
23 on anyone.
24 The Commission's already made the
25 determination that they are going to require people

1 to give the kind of evidence that Mr. Dodge and Mr.
2 Ginsberg were talking about. The Commission's
3 decided that those parties will have the burden to
4 file in their direct testimony sufficient evidence to
5 convince the Commission that it's either relevant or
6 irrelevant.

7 We're simply asking that that determination
8 be made earlier, that they file a statement
9 identifying what that nexus is.

10 So far, you'll notice from the issues
11 statement, what we've gotten are comments like unique
12 opportunity. I've heard unique opportunity in four
13 different contexts. It's a unique opportunity, for
14 reasons that are unexplained, to make a determination
15 RTOs are in the public interest. It's a unique
16 opportunity to address annexation and
17 municipalization issues.

18 I submit that we need more than that, and
19 it's appropriate for people to provide more than that

20 earlier.

21 MR. MCNULTY: Mr. Chairman.

22 CHAIRMAN MECHAM: Mr. McNulty.

23 MR. MCNULTY: There may be some merit to

24 everything that's been raised here. I will agree

25 that there may be an issue -- there may be issues

1 that you can address in a summary fashion as they are
2 issues. What the PacifiCorp and Scottish Power
3 people seem to be asking for -- and if I'm
4 misstating, I apologize -- my interpretation is
5 they're asking for a quasi partial motion for summary
6 judgment and then a determination by you that certain
7 issues are out of the case or you can't decide them.
8 And that sort of lines up nicely with a courtroom
9 partial motion for summary judgment and then an order
10 based on that.

11 The problem is, and they identify it, is in
12 order to rule on something like that, it would seem
13 to me that you're going to have to, and both parties
14 are going to have to, have various facts put
15 together.

16 Not, I agree -- the law will be important,
17 but there will also be fact issues, I suspect, as
18 there are in any sort of summary judgment issues,
19 that may or may not allow you or force you to make a

20 decision pro or con on what is effectively a motion

21 for partial summary judgment.

22 Well, we don't have -- file testimony until

23 June 18th. If our different -- I'll talk about

24 annexation only. If our testimony is so devoid of

25 issues that it cannot be relevant here, or so devoid

1 of testimony that it cannot be relevant, then that's
2 the time, it seems to me, that someone files a motion
3 for partial summary judgment quoting our facts,
4 quoting their facts, and the law, and then submit it
5 to you.

6 And then at that point, after testimony has
7 been filed, and after maybe the second round of
8 testimony comes up from Scottish Power and
9 PacifiCorp, that's the time, after the July deadline
10 for testimony, that you make a determination as to
11 what evidence you are going to allow at the August
12 hearings.

13 And that lines up almost perfectly with how
14 things are done over at the Matheson Courthouse and
15 at the federal courthouse. Because that's the way
16 this is designed to work. And we have no problem
17 being a part of that system.

18 COMMISSIONER WHITE: Can I ask a question,
19 Mr. McNulty? One reason the Commission is looking at

20 giving everybody a chance to file direct testimony is
21 because we do want to understand what is it about an
22 issue that might be directly relevant or not.
23 Because sometimes just mentioning the issue or naming
24 the issue may not give us enough information.
25 But right now, you must have something to

1 convince you that your issues are relevant. Do you
2 think that you could explain them adequately, without
3 developing a full factual record through discovery,
4 in the next few weeks, as Mr. Hunter is advocating,
5 to help the Commission understand what the relations
6 might be to the merger, let us make a decision on
7 that, before you know whether or not you'll have to
8 fully develop the facts?

9 MR. MCNULTY: Well, again, based upon some
10 burden for the standard of review based on whether
11 facts do impact the relevancy, I suspect that I could
12 put together a memorandum on the law. But --

13 COMMISSIONER WHITE: Because how
14 fact-specific -- how dependent on facts would this
15 stage be, do you think? That is, the stage of
16 deciding what issues are relevant and what aren't?

17 MR. MCNULTY: Facts are almost always
18 paramount in relevancy. You know. If you're making
19 a decision on -- in fairness, if you're making a

20 decision based upon your authority, then you could
21 theoretically just look at the statute and look at
22 your previous rulings and look at Supreme Court
23 review of those rulings.

24 And I guess facts might not be as important
25 in that case. But I still don't see how you can

1 escape the need for facts, for a fact determination,
2 and look at specific facts in order to determine
3 whether something is right, if you will, for
4 dismissal or non-treatment.

5 COMMISSIONER WHITE: You think some of
6 those facts you don't know yet, and you could only
7 develop through discovery?

8 MR. MCNULTY: Well, I think we've had -- we
9 have not yet -- I know we have not filed our facts.
10 We're not filing our testimony until June. At that
11 point, I think it's -- it may well be.

12 And you may want to consider motions at that
13 time as to relevancy once you have the facts and once
14 you have the law in front of you. At that point,
15 after that, you may want to do something like that.

16 CHAIRMAN MECHAM: It's clear from the first
17 point of our memorandum that following that sort of
18 process is what we contemplated when we issued the
19 memorandum.

20 Are you saying, Mr. Burnett, that you've
21 given us enough information to be able to exclude
22 issues and be sustained if someone feels strongly
23 enough about it, if and when it goes to the Supreme
24 Court, that they were addressed adequately here and
25 were given full due process?

1 MR. BURNETT: I know any court or tribunal
2 or Commission is worried about that particular issue.
3 But again, I go back to the definition. Is it more
4 probable or less probable than it would be without
5 the evidence?

6 In other words, you let in extensive evidence
7 about deregulation. Is it more or less probable that
8 you're going to -- it's going to have any impact on
9 whether or not Scottish Power should be able to buy
10 the stock of PacifiCorp?

11 I don't think it has anything to do with
12 that. And I think you have enough in front of you to
13 make that determination and be upheld on appeal.

14 COMMISSIONER WHITE: So is the gist of your
15 comments, Mr. Hunter and Mr. Burnett, that discovery
16 is burdensome because the parties aren't necessarily
17 limiting their requests to facts but are asking for
18 opinions or views? Is that what's making it
19 burdensome?

20 MR. HUNTER: No. In fact, I wasn't trying
21 to make the argument it's burdensome. The point I
22 was making is the Commission is not going to have an
23 opportunity to wait until June 18th to address these
24 issues. These decisions are being made on a
25 case-by-case basis, which will come to you for

1 determination on motions to compel. So it's not
2 something you can wait until June 18th to make a
3 decision on.

4 What we were suggesting, and the burden I see
5 is I don't know what I have and have not the burden
6 on. I don't even know what the relevant issues are.
7 And I would like some direction on that and some
8 help.

9 What I was suggesting is if the Commission is
10 concerned that they don't have a sufficient record to
11 make that determination, there's no reason why
12 parties couldn't give them something to make that
13 record now.

14 Let's look at annexation. Annexation is not
15 a fact-driven issue. Annexation, by law, in the
16 state of Utah, is determined, if the parties can't
17 agree on it, by a district court.

18 What UAMPS has asked is that this Commission
19 come up with a valuation of the property. That's

20 clearly not only not relevant to this proceeding, but
21 outside the Commission's jurisdiction. That's not
22 fact-specific.

23 But let's assume that there are facts that
24 would somehow put that within the ambit of this
25 hearing. I have no problem with the parties coming

1 up with a series of facts, which they haven't
2 determined yet, that they'll somehow flesh out
3 through discovery, that would make it relevant.

4 I have no problem with them giving their best
5 shot and showing why this issue should be before the
6 Commission. There's no need to wait until June 18th
7 and see testimony to do that. Parties can do that
8 now.

9 Saying they haven't done the discovery yet so
10 they can't make that argument does not give adequate
11 credit to people's creativity. I'm absolutely
12 confident that people can say, "Under these
13 circumstances, if I got these facts, here's the
14 reason why this would be relevant."

15 We haven't gotten any of that yet. As I
16 said, all we've gotten so far is this is a unique
17 opportunity. People are in a position to provide
18 more than that, and should.

19 MR. BURNETT: And I might just add, in a

20 district court, they don't let all the evidence in
21 and then decide its relevance. There are motions to
22 exclude evidence before it comes in because it's not
23 relevant and is ruled on.

24 MR. MCNULTY: If that's the case, then let
25 them make their motion that facts are not relevant.

1 Let them make their motion on a case-by-case basis
2 during the discovery process.

3 MR. ALLRED: Mr. Chair, I suggest we even
4 go back further than that. We have spent the last
5 two months meeting with other attorneys for the
6 applicants, and the parties and have been seriously
7 moving towards resolution of some of those issues.

8 To suggest that the hearing on March 5th was
9 in fact an adversarial proceeding in which all the
10 parties had an adequate opportunity to address the
11 issues is contrary to the facts. We had a discussion
12 among the parties, and frankly, had I known it was
13 going to be an adversarial proceeding in which this
14 Commission was taking action, it would have been
15 handled in a distinctly different manner.

16 We were led to believe and continue to
17 believe that we are trying to reach a solution with
18 the applicants over our particular issues. We're
19 hearing today that there's likelihood they're taking

20 a position that is contrary to that.

21 And I would like the opportunity to deal with
22 that, if, in fact, that is the corporate position the
23 applicants are taking.

24 I would strongly suggest that it's incumbent
25 upon them -- given the order that has said that Utah

1 League of Cities and Towns's petition for
2 intervention is granted, as were the issues contained
3 in there, that it is now incumbent upon PacifiCorp
4 and Scottish Power to bring forth an objection to
5 that, and the basis for the objection, to which we
6 can then respond.

7 There simply is not a sufficient basis for
8 the Commission to make that determination at this
9 point in time.

10 CHAIRMAN MECHAM: Well, and I suppose what
11 Mr. Hunter proposed, though, would give you that
12 opportunity.

13 MR. ALLRED: Well, I suggest it's their
14 responsibility to bring that objection forward, and
15 then we would respond. But it's not our burden to
16 come forward at this point in time. The Commission,
17 as I read the original order, has granted
18 intervention and has approved the issue for further
19 proceedings in this matter.

20 MR. BURNETT: Well, I might add, if the
21 parties don't feel like they've had an adequate
22 opportunity to address that issue, I certainly don't
23 want to deprive them of that opportunity. And I
24 agree with Mr. Hunter, the way that can be done over
25 the next month or so, if that's an issue.

1 And I apologize to Mr. Allred if he feels
2 like somehow we didn't give him that appropriate
3 opportunity on the last hearing. Which was
4 unfortunate.

5 But again, I think that these are issues
6 we're not going to be able to avoid. They're going
7 to come up before the June 18th hearing. And just as
8 a matter of judicial expediency, it would be nice to
9 knock some of them off the table.

10 MR. DODGE: Mr. Chairman, if I might raise
11 a related point, in your Paragraph 2 of the memo, the
12 Commission raises the question about some confusion
13 about exactly what kind of findings are needed to
14 approve this application.

15 And therein lies the problem with trying to
16 analogize this case to a courtroom where the standard
17 of proof is fairly clear and the legal issues and
18 factual issues are fairly clear.

19 This is a fairly open-ended decision placed

20 before this Commission. Is this in the public
21 interest? Whatever that means. And I suspect it
22 really means whatever you three as Commissioners
23 ultimately conclude it means.

24 It's certainly not uncommon for Commissions
25 throughout the country, when faced with these kinds

1 of situations, to consider a whole host of issues,
2 even some that aren't within their jurisdiction. And
3 I submit that your memorandum sets out the proper
4 format for that.

5 For example, if this Commission were at the
6 end of the day, after all hearings, to conclude, we
7 can't find any value here, there's nothing good about
8 it, we're not sure there's anything bad about it, but
9 there's risk, so on balance, we don't think we can
10 approve it as in the public interest.

11 It would certainly be within this
12 Commission's authority, if it chose to, to say, on
13 the other hand, if the merged companies were to
14 accept this condition and that condition, it clearly
15 would, then, tip the scales in the public interest.
16 It's done all the time. FERC does it every chance it
17 gets to try and further its own goals.

18 I don't know what this Commission's goals
19 are. But let's pretend one of the goals was to fix

20 the annexation problem. Maybe it's not. But even if
21 it's not within your power, you could certainly hear
22 evidence, with the burden being on those promoting
23 it, to say, if you don't find this is in the public
24 interest, it could tip the scales if you would to
25 say, we would accept it if this issue could be

1 resolved in a way that we think promotes the public
2 interest as we as the Commission see it.

3 It would be true of several other issues as
4 well. Parties ought to be willing to accept the
5 burden to convince you of that. This is good for the
6 state, it's good for you, you ought to consider it.
7 It doesn't mean they ought to be able to discover the
8 heck out of it from the company. I mean, it's --
9 relevant discovery, sure. But again, they can object
10 if the discovery is burdensome.

11 One shouldn't just say, deregulation is off
12 the table, or annexation is off the table. One ought
13 to say, as this memo properly does, I think, the
14 burden is on those that want to convince us it's a
15 legitimate public interest consideration in the
16 context of this merger.

17 With that, I don't think there's a heavy or
18 unusual burden on the company. They can say, "That's
19 not our burden." We'll respond.

20 MR. HUNTER: I point out again, we're not
21 talking about eliminating their opportunity to do any
22 of that. We're talking about moving it from June
23 18th, three months away -- we filed in December.
24 We've had several months of discovery. Instead of
25 June 18th, we're simply suggesting that they do what

1 they talked about being willing to do a little
2 earlier. And there's no reason, practical or legal,
3 why they shouldn't be able to do that.

4 CHAIRMAN MECHAM: Thank you.

5 MR. REEDER: We're on a fairly fast track
6 and have been over some of our objections, as you may
7 recall. We're vigorously pursuing discovery, the
8 company is doing an adequate job of trying to
9 respond, and hopefully, we're going to discover what
10 the risks are to this transaction sometime in the
11 next two or three months so we can begin preparing
12 our testimony.

13 I think it would be unreasonable if the track
14 and the pace that we're moving on caused us to, in
15 the middle of trying to discover what the potential
16 risks are, come to try to determine whether or not
17 those risks we have not yet discovered are relevant
18 for determination here.

19 This is a fairly significant transaction. It

20 could have fairly significant effects with respect to
21 the health of the electric utility industry in the
22 state of Utah. I think we need to look under every
23 stone and make sure there isn't a harm that befalls
24 us here.

25 The company is being very cooperative, but

1 there are lots of stones to turn, lots of things we
2 discovered just this last week that we still need to
3 pursue. We're no way prepared this week, next week,
4 and probably not for several weeks in the future, to
5 tell you where we think the risks are to this
6 transaction that you should be looking at, or how you
7 should address.

8 Given the fast track, it may be ill advised
9 to shorten the discovery process or shorten our
10 process of presenting evidence until we've had a full
11 opportunity to pursue it. This is a fairly fast
12 track for a transaction of this stature.

13 CHAIRMAN MECHAM: Okay. Let's move off
14 this issue for just a minute. We'll return to it.

15 There are other issues that we raised in this
16 March 31st memorandum. And Mr. Dodge raised the
17 first one. Well, after the one we've just been
18 discussing. And that is sort of your preliminary
19 view of what findings are necessary to support a

20 public interest decision. Has anybody given that any

21 consideration? Mr. Reeder appears prepared.

22 MR. REEDER: I enjoyed reading the

23 paragraph just now.

24 MR. DODGE: Mr. Chairman, I basically said

25 what I could. I share your sense of -- I don't know

1 if it's frustration or confusion. Again, a standard
2 as nebulous as public interest in this context is not
3 easy.

4 In some contexts, the public interest
5 standard is easier to get your hands around. In a
6 merger, it really isn't. Particularly a merger where
7 there are no easily demonstrable benefits through
8 efficiencies, but rather, simply corporate attitude
9 changes, or whatever, that presumably could happen
10 without a merger.

11 I submit that the findings that are necessary
12 at the end of the day is after considering, here are
13 the risks, here are the potential advantages, do we
14 think, on balance, it makes sense?

15 Again, I think you hold out the option to say
16 it would make sense if certain things happen along
17 with it if the company has accepted certain things.
18 But beyond that, I'm afraid I can't help you a whole
19 lot.

20 MR. HUNTER: We did a brief amount of
21 research in the data we had available, looked at
22 cases. And from our perspective, it is relatively
23 clear.

24 You might read the words differently, but the
25 cases are relatively clear, that the -- is the merger

1 consistent with the public interest in achieving and
2 maintaining efficient, reliable and adequate public
3 utility service?

4 That's a standard that's been adopted in a
5 number of cases. It has subissues, which we will
6 phrase in a way consistent with our understanding of
7 what the standard is.

8 Will the merger have a substantial and
9 material impact on public utility customers in the
10 state of Utah? Will it result in a loss or
11 impairment of the Commission's regulatory
12 jurisdiction over the activities of Utah Power? Will
13 it have a materially adverse impact on rates in the
14 state of Utah?

15 Those are the three standards that the
16 Commission has used in the CP National and the Utah
17 Power/Pacific merger. We don't think those standards
18 have changed.

19 CHAIRMAN MECHAM: Mr. Tingey or Mr.

20 Ginsberg?

21 MR. GINSBERG: I have not had an

22 opportunity to do any real research into what the

23 public interest standard is. But I think it needs to

24 be broad enough not to -- I know many things have

25 already been done in the name of the public interest

1 in mergers throughout the country. Those are
2 obviously the core areas that Mr. Hunter related.

3 But I don't think it necessarily has to be
4 limited solely to that. It could deal with local
5 issues, employment issues, the effect on the state of
6 Utah. I don't think I'm prepared to, in any great
7 detail, define the public interest today.

8 CHAIRMAN MECHAM: Mr. Tingey?

9 MR. TINGEY: I'll pitch in. Agreed for the
10 most part with what Mr. Dodge has said. And our
11 thinking as well, we haven't had a lot of chance to
12 do research, but the big picture idea seems to have
13 already been defined in Paragraph 4 of the
14 memorandum.

15 But what the record must show, and if the
16 record must show that, then that's what the findings
17 ought to be, that the cost and benefits of the merger
18 on balance weigh in favor of the merger. So that
19 those costs and those benefits need to be quantified

20 and then you decide -- net them out, if they net up

21 on the positive side.

22 But it's the very general big picture idea,

23 but that seems to be as far as we can get down that

24 road right now.

25 CHAIRMAN MECHAM: Okay. Anyone else on

1 this point?

2 COMMISSIONER WHITE: Mr. Tingey, your
3 memo -- the Committee's memo that was filed just the
4 other day appeared to be in the substance, if not the
5 form, of a motion to compel a more definite statement
6 from PacifiCorp, or more filings, more information.
7 How do you want us to deal with that?

8 CHAIRMAN MECHAM: We were going to get to
9 that. But what's lacking?

10 MR. TINGEY: The substance.

11 CHAIRMAN MECHAM: Okay. What besides that?

12 (Laughter.)

13 MR. TINGEY: There is no substance.
14 There's no analysis, there's no number, there's no
15 quantification. And yes, it is in the form of a
16 motion for more definite statement. And I'll tell
17 you the thinking that went behind it so you know
18 where we're coming from.

19 And that is, looking at the testimony and our

20 consultants, which came on board about as we
21 predicted last hearing, which was good news -- the
22 timing was about what we thought -- was exactly that.
23 There's no substance here, and in fact, this looks
24 like a motion to dismiss would be appropriate.
25 We looked at that and thought, well, what we

1 have here is an opportunity to deal with this today,
2 file a memo a couple of days ago. Then in two weeks,
3 the applicants have the opportunity to file
4 supplemental testimony.

5 And so the thinking was, well, they have
6 another chance. Was the idea. And that is where
7 we're coming from. They need to take advantage of
8 that chance, and we'd like you to direct them to do
9 that, to give us some substance. Give us something
10 we can analyze to decide whether there are net
11 positive benefits here.

12 There isn't anything that we can say, you
13 can't balance them out because there's no
14 quantification, there's no analysis behind them.
15 Discovery requests, they say we don't know, we don't
16 won't know until after the merger is completed.

17 We're looking for some way to do our job here
18 and analyze this merger and see if it's in the public
19 interest and if there are net positive benefits.

20 CHAIRMAN MECHAM: I guess that's the thrust
21 of their third paragraph in your statement. No
22 analysis of the magnitude of the benefits and costs.
23 Mr. Burnett, you seem prepared to say something.
24 MR. BURNETT: I would respectfully disagree
25 with Mr. Tingey's analysis of our filing. We have

1 identified \$10 million in corporate cost reductions.

2 CHAIRMAN MECHAM: He points that out.

3 MR. BURNETT: There are additional

4 expenditures to improve system performance, which he

5 incorrectly points out he thinks -- the \$10 million a

6 year will be an annual corporate cost reduction

7 directly attributable to the merger.

8 The additional investment in the

9 infrastructure will be capitalized, and there you're

10 looking at \$55 million a year. You can't subtract

11 the two. Much of it will be capitalized. That's

12 kind of an outside number. We're going to try

13 through existing budgets to reduce that number.

14 There are benefits from having the system be

15 more reliable. We have specified system performance

16 benefits, customer service benefits. We have

17 specified \$5 million we're giving to the PacifiCorp

18 Foundation. We have specified a \$1.5 million

19 increase to low-income customers. We have specified

20 our commitment to the environment. We have specified

21 a variety of other things.

22 And if the Commission has interest in looking

23 at the list, we have outlined that. We could provide

24 this at a later date. But it goes on for nine pages

25 of commitments and specifics which we believe show a

1 prima facie case of a net positive benefit.

2 We believe we've met our burden in that
3 respect. We believe that the ratepayers and the
4 shareholders of PacifiCorp will be better off after
5 this transaction than before. We believe it's in the
6 public interest. We believe we've demonstrated that
7 in the prima facie case.

8 Now, it might not be the computer model some
9 people want with inputs, goes through a black box,
10 spits out a number, where everybody argues about
11 whether or not the computer model is legit. But we
12 come in with hard numbers on those items.

13 We think it meets the positive benefits
14 standard. And we believe we've met our burden on
15 that. We think it would lose a motion to compel.
16 They're happy to bring it.

17 MR. TINGEY: We'd certainly disagree. Do
18 you want more?

19 CHAIRMAN MECHAM: What more do you have?

20 MR. TINGEY: Responding to the assertion
21 that they have given specifics, and they haven't. In
22 our memo, we have put in the two numbers they have
23 produced. \$55 million in costs, we ask them what
24 they're going to do with that, and the response was,
25 "We don't know, and we won't know until after the

1 merger is completed." We've got a number; we don't
2 know what it's for, what they're going to do with it,
3 how it's going to be spent, when.

4 We have \$10 million in savings that they have
5 alleged. The testimony says they hope to get that in
6 two or three years. It's a hope and a prayer.

7 And Mr. Burnett has talked about their belief
8 that they can do this and their belief that they can
9 do that. And that is the essence of the testimony is
10 their belief, and they're asking us to believe that
11 they can do these things. And that's not enough.

12 COMMISSIONER WHITE: Mr. Tingey, if you
13 can't get the company to completely specify the
14 details of what would happen to that money, do you
15 think that would be appropriate for the Committee to
16 recommend conditions for the Commission to accept in
17 order for it to be in the public interest for the use
18 of that money?

19 MR. TINGEY: Certainly. And as we've

20 talked this morning, that is an option that is
21 certainly out there. That the Commission can decide,
22 as Mr. Dodge stated it better than I will, I'm
23 sure -- you can come to the decision that, well, we
24 don't know, but if these certain conditions are met,
25 then this is in the public interest.

1 And certainly -- and I would be surprised if
2 the Committee doesn't have some conditions to
3 recommend along those lines.

4 The problem is, in the meantime, how do we
5 make any analysis? How do we come to those decisions
6 about what conditions to recommend? When the
7 testimony doesn't have any specifics, data responses
8 are "We don't know, we won't know until after the
9 merger."

10 We're trying to figure out how to do our job
11 is what we're doing. And we're not -- there's
12 nothing that we can look at to analyze to do that
13 job.

14 CHAIRMAN MECHAM: Mr. Burnett?

15 MR. BURNETT: The \$10 million in corporate
16 cost reductions is a commitment. It's not a, "We
17 think we'll be there." We're committed to reflect
18 this in reduction of PacifiCorp rates, as we've
19 specified in our testimony.

20 This is a broad standard, in the public
21 interest. We believe, when you take the package that
22 we have offered and put forward, we meet that
23 standard. There will be additional cost savings, we
24 believe.

25 Scottish Power has been successful in

1 reducing their costs in their own operation. In the
2 two subsequent purchases or acquisitions in ManWeb
3 and Southern Water, they've done exactly the same
4 thing. They've been able to do this previously.
5 They have experience in it. They believe that
6 they'll be successful in helping PacifiCorp become
7 more efficient.

8 And ultimately, those reduced costs will be
9 reflected in rate cases. We believe that rates will
10 be lower than they would have otherwise been because
11 of the transaction.

12 It's hard to pin down those numbers, exactly
13 what those will be in the long run. But we have
14 specific numbers that we have pinned down. And
15 specific commitments that are positive. So we
16 believe we've met our prima facie requirements.

17 COMMISSIONER WHITE: Mr. Burnett, as you
18 can see, the Commission's expressed some concern
19 about commitments or conditions and have asked the

20 parties to perhaps submit proposals on what-if
21 conditions. That is, if a commitment isn't met, or
22 if something doesn't happen.

23 Will the company be proposing ways for the
24 Commission to deal with that in case some of the
25 commitments are not met?

1 MR. BURNETT: Well, we weren't -- we're
2 proposing conditions of our own. We've made
3 commitments. I guess you could say -- for example,
4 the \$10 million in corporate cost reductions, we
5 expect is a -- that's a commitment from us which will
6 be reflected in rates by the end of the third year.

7 CHAIRMAN MECHAM: All right. But I guess
8 the question really is, and it's in Paragraph 5 of
9 the March 31st memorandum, what if that doesn't
10 happen? We're three years into a merger. How would
11 we enforce a missed condition?

12 MR. BURNETT: In that particular instance,
13 since you have absolute control of the rates that are
14 set by PacifiCorp, you could easily impute that.

15 CHAIRMAN MECHAM: But if it's a condition
16 of the merger, it's a little bit hard to go back
17 three years and undo the merger that's been in effect
18 for three years.

19 MR. BURNETT: Well, I understand that. But

20 if you have the effect of that, then the shareholders

21 are willing to take that risk, aren't they?

22 CHAIRMAN MECHAM: I'm not sure.

23 MR. REEDER: Frankly, it's one of the

24 difficulties you're going to find in this case is

25 defining the conditions and designing enforceable

1 covenants for the conditions. As you look at the
2 conditions that are being considered elsewhere with
3 respect to this merger, you may have to specify
4 conditions such as prohibiting cross-defaults so as
5 to ensure the availability of capital so as to be
6 able to expand the system.

7 We're in the process of trying to understand
8 what those things are and where they're being
9 proposed in the discovery that we're doing now.

10 As you start to think about conditions, you
11 may have to think about conditions with that degree
12 of technical specificity in order to have conditions
13 that assure that the outcomes that you desire,
14 protecting the electric industry in the state of Utah
15 for the future, can indeed occur.

16 You could enforce those kinds of conditions
17 by requiring as a part of the compliance order that
18 they issue their financial documents in such a way so
19 as to preclude, to keep with that one condition,

20 conditions against cross-default. Assure that that
21 happens. And then keeping your securities issuance
22 situation, reviewing the issuance of debts or other
23 securities to ensure that condition is indeed met.
24 But you may need to get to that kind of
25 specificity with respect to conditions to ensure that

1 the concerns that some of us have don't, indeed,
2 occur.

3 COMMISSIONER WHITE: Is it your intention
4 to submit some proposed conditions?

5 MR. REEDER: Yes, it is our -- well, first,
6 if the merger can be found to be in the public
7 interest, because it appears that there is some
8 advantage for it, then, in order to assure that the
9 evils that may befall because of the adverse
10 consequences, yes, we would be proposing conditions.

11 We first need to get over the first hurdle.
12 We're in the same position as Mr. Tingey. We find
13 the filing thin. We're trying to flesh it out in
14 discovery, and we're well under way on that task.

15 CHAIRMAN MECHAM: Does anyone else have
16 observations insofar as conditions are concerned,
17 since that was one of the subjects that we raised?

18 MR. HUNTER: We'd point out that despite
19 what Mr. Dodge said earlier about the Commission's

20 ability to condition the merger any way it wants,
21 independent of what actual jurisdiction it might
22 have, we don't think that's the law, and we'd be
23 happy to brief that issue.

24 That the Commission -- the conditions the
25 Commission imposes on the merger should be those

1 related to the jurisdiction it had. Since it is --
2 some of the conditions that were imposed on the
3 merger last time turned out to be things that were
4 outside the Commission's jurisdiction.

5 And employment guarantees. I know that the
6 ALJ decisions addressing that issue drew the
7 conclusion no one had lost their job as a result of
8 the merger, and therefore, the condition had not been
9 breached.

10 Assuming the condition had been breached, as
11 the Commission pointed out, since the Commission
12 doesn't have jurisdiction over the hiring and firing
13 of employees in the state of Utah, how would you
14 enforce that condition?

15 We think it makes more sense to decide what
16 you want the company to do in a regulatory sense and
17 operational sense, in a customer service and rate
18 sense, and then adopt those kind of conditions rather
19 than adopt the kind of conditions we've talked

20 about -- annexation, forcing the company to join an
21 RTO as a condition of the merger, those kind of
22 things that are foreign to your jurisdiction. Thank
23 you.

24 CHAIRMAN MECHAM: Mr. Ginsberg?

25 MR. GINSBERG: Maybe one approach would be

1 to have the company, based on what commitments they
2 are making in their testimony, to file with the
3 Commission language that would propose conditions for
4 the merger that would meet the test that you've set
5 forth of being measurable, definable, enforceable.

6 Of how these commitments that they are making
7 would be translated into an enforceable condition
8 that would appear on an order of a merger. We would
9 have some document to focus on.

10 MR. CRABTREE: Mr. Chairman, I think in
11 regards to conditions that people or parties may
12 suggest, I think there are two different types of
13 conditions. And it would be good to differentiate.

14 One type of condition is, perhaps, the type
15 that Mr. Hunter is more focused upon. Those are the
16 conditions that fall well within the Commission's
17 jurisdiction.

18 But I think equally, there are conditions
19 which the company can consensually agree to in order

20 to ameliorate or to mitigate, you know, detrimental

21 effects -- what would otherwise be detrimental

22 effects from the merger.

23 I think those other possibilities ought to be

24 considered also. It's not entirely a blank slate

25 we're dealing with.

1 CHAIRMAN MECHAM: Who would enforce those?

2 MR. CRABTREE: Again, I think it's a matter
3 there of consensual conditions. Once the consent is
4 given, it would become a matter of how the condition
5 is worded, whether or not it becomes a contract, for
6 instance, or whether there's consensual submission to
7 the jurisdiction.

8 I'm simply pointing out, I think there are
9 wider variations and possibilities than merely
10 looking to the Commission -- adhering to the
11 Commission's strict jurisdiction.

12 MR. HUNTER: This sort of raises, in a very
13 clear way, the practical problem. Everybody sees
14 this merger as an opportunity to get things done that
15 they've been unable to get done through the normal
16 legal and contractual process.

17 For example, for sale of service territories.
18 DG&T wants to serve Vernal. It's a debate that's
19 gone on long before I was here, and long after I'm

20 gone, it will continue to go on, I'm sure.

21 What DG&T wants -- if the company wants the

22 merger to go through, they're going to have to give

23 DG&T what it wants, the certificate to serve Vernal.

24 That's exactly the kind of situation we would like to

25 avoid. We don't think that it's appropriate to use

1 this transaction as bargaining leverage for everybody
2 in the state of Utah that has an ax to grind.

3 We don't think it's in the interest of our
4 customers to get into that situation either, where in
5 order to buy approval of the merger and convince
6 intervenors that they should suddenly switch to
7 supporting the merger, that you have to give things
8 up.

9 We don't think that's the purpose of this
10 proceeding before the Commission, and we think there
11 are ways to avoid turning it into that kind of
12 proceeding.

13 CHAIRMAN MECHAM: Mr. Burnett?

14 MR. BURNETT: Scottish Power is regulated
15 in the United Kingdom and has certain conditions
16 imposed upon it, etcetera. So it's not something
17 that we are not used to having.

18 But as Mr. Hunter reiterated, they need to be
19 somewhat related to this hearing, somewhat related to

20 your ability to enforce them. I mean, there are a
21 lot of problems in the state of Utah. This procedure
22 and this docket cannot solve all problems. You
23 cannot be used as a docket to solve all problems
24 associated -- in the state of Utah.

25 And it's starting to expand. I would suggest

1 that you block out the month of August instead of
2 seven days for this hearing. It's getting bigger as
3 we go along.

4 MR. REEDER: At an appropriate time, it
5 would become appropriate for you to look at the
6 license issued to Scottish Power. There you would
7 find, with some precision, stated some conditions
8 that may be useful to assure that the future of
9 PacifiCorp is in the interest -- PacifiCorp is
10 operating in the future in the interest of the
11 public.

12 You may also find of interest what goes on in
13 the U.K. in this approval process. Although Mr.
14 Burnett and Hunter may lament of that, this
15 proceeding may evolve to one other than whether or
16 not this transaction in its purest form is the
17 consideration. It happens in the U.K. too.

18 The issue we raised in our additional issue
19 this morning involved the separation of assets. The

20 appropriate condition here ought to be if they are
21 appropriate in the U.K., to protect the assets and
22 management from draining off into the Rockies, maybe
23 there are appropriate conditions in the Rockies to
24 prevent assets and management from draining off into
25 the U.K. They're appropriate to consider.

1 MR. HUNTER: I point out, Mr. Reeder has
2 evidence we don't have. As a real fact, the U.K.
3 government has not imposed -- the regulator has not
4 imposed any conditions as a result of this merger.
5 None.

6 As a result of deregulation, there were
7 things adopted by the regulator. If deregulation
8 happened in the state of Utah, I assume this
9 Commission and the Legislature would adopt the
10 appropriate standards to do the kind of things Mr.
11 Reeder is talking about.

12 But deregulation isn't the issue here, and
13 the U.K. and the regulator have not adopted
14 conditions associated with this transaction.

15 MR. REEDER: We expect to be answered in
16 two weeks. It's premature to be filing issues in
17 this case, because we expect the U.K. to act on this
18 in the next two weeks. That's the press report.

19 MR. HUNTER: That's not accurate, my

20 understanding. It's not going to happen in the next

21 two weeks.

22 CHAIRMAN MECHAM: What is there further on

23 conditions? Anything? Does anybody have any further

24 argument on burden as we outlined in Paragraph 4?

25 MR. HUNTER: Simply reiterate that we'd

1 like additional help on what we do and do not have
2 the burden on.

3 CHAIRMAN MECHAM: The issues. Okay.
4 Before we adjourn today, let's take a recess.

5 (Whereupon a recess was taken.)

6 CHAIRMAN MECHAM: Let's go back on the
7 record. Rather than keep you longer this morning,
8 it's fairly clear that we're going to have to mull
9 this over a little bit longer. And most likely
10 contact you by e-mail to let you they exactly how
11 we're going to proceed from here, whether we do what
12 Mr. Hunter and Mr. Burnett suggest or not and/or
13 whether we require supplemental filings for the --
14 from the applicant.

15 Insofar as the issues are concerned that we
16 discussed from the March 31st memorandum that we
17 issued, those findings that we'll need to make, a
18 public interest finding that this merger is indeed in
19 the public interest -- and we're not finished with

20 that issue -- we're going to need additional
21 information from you, and we're going to talk about
22 that among ourselves as to how we're going to get it
23 from you. And the same is true with respect to the
24 conditions that may or may not be imposed.

25 So with that, is there anything else we need

1 to do on the record?

2 MR. HUNTER: No, Mr. Chairman.

3 CHAIRMAN MECHAM: All right. Then let's

4 adjourn for the day. Thank you.

5 (Whereupon the proceedings were

6 adjourned at 10:30 a.m.)

7

8

9

10

11

12 * * * * *

13

14

15

16

17

18

19

20

21

22

23

24

25

55

1 STATE OF UTAH)
) SS.
2 COUNTY OF SALT LAKE)

3

I, MARY D. QUINN, Certified Shorthand Reporter,
4 Registered Professional Reporter and Notary Public
5 in and for the State of Utah do hereby certify:

6

That the foregoing transcript pages were
7 stenographically reported by me at the time and
8 place hereinbefore set forth;

9

That the same was thereafter reduced to
10 typewritten form;

11

And that the foregoing is a true and correct
12 transcript of those proceedings.

13

14

15

16 DATED this _____ day of _____,

17 19____.

18

19

20

MARY D. QUINN CSR, RPR

21

My Commission Expires 1/5/2002

22

23

24

25