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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of
PacifiCorp and Scottish Power plc for an
Order Approving the Issuance of PacifiCorp
Common Stock.

**RESPONSE OF THE DIVISION OF
PUBLIC UTILITIES TO APPLICANTS'
ISSUES MEMORANDUM**

DOCKET NO. 98-2035-04

The following is a Response by the Division of Public Utilities (“DPU”) to Applicants’ Issues Memorandum dated April 13, 1999.

1. During the initial hearing on issues in this proceeding, the DPU indicated that it generally did not believe issues such as industry restructuring, annexation, municipalization, or changes in territory from one provider to another should be the subject of this proceeding. The DPU did not believe particularly that these issues should be the subject of implementation in this docket, except possibly to protect against independent actions by the company.

The company points out in its filing (see footnote 1) that the DPU and Committee in their issues statements included issues that related to some of the above issues.¹ The company

¹See DPU Issue Statement 2(b)(c) which provide the question “under what conditions might Scottish Power separate PacifiCorp into distinct distribution, transmission and generation entities within the next five to ten years? And does Scottish Power support a regional grid management organization?”

indicated in its footnote that both the DPU and the Committee no longer believed that restructuring issues should be part of this proceeding. At least from the DPU's prospective, restructuring should not be implemented in this proceeding nor conditions considered that would in any way usurp the legislature or any commission independent powers to restructure the industry. The DPU originally included the listed issues in its issue statement only to present a complete statement of issues to the Commission. It only appears relevant to show what, if any, attitude or views the company may have on restructuring. Such attitudes may either positively or negatively affect one's perception of the "public interest."

With respect to solving any legal uncertainties surrounding the terms upon which property is exchanged upon annexation, the DPU does not see how such issues are relevant to this proceeding. Likewise, a municipality's right to acquire a public utilities property appears irrelevant to this proceeding. A municipality either has a right to acquire utility property or otherwise municipalize independent of the Commission. This merger does not appear to have any affect on those rights.

2. Comments on issues on which other parties have the burden.

Starting at p. 5 of its memorandum, the Applicants list a number of issues which they believe are outside the Commission's normal jurisdiction and, therefore, other parties have the burden and Applicants have no affirmative burden to demonstrate benefits or even show an absence of harm. The language both the Commission and the company quotes dealing with burden comes from the Commission's November 20, 1987 Order establishing the standard of net

positive benefits. Although that Order may relieve the company from an affirmative burden to demonstrate benefits or an absence of harm, it does not relieve the company from the obligation to disclose the affect the transaction may have on issues that nevertheless affect the public interest. A number of the issues listed fall into that category. These include (c) workforce / local control / economic development / coal company, (d) environmental issues, (e) underground and related issues.

Each of these issues are not clearly within the Commission's traditional regulatory authority. However, changes in employment, local control or the environment occurring as a result of this merger nevertheless, affect the public interest.²

(b) p.6 Fair market value of PacifiCorp's facilities. As the DPU understands the issues being raised by Emery County, we believe that the burden to show that property taxes will not go up as a result of this transaction clearly rest with PacifiCorp. The counties appear to be arguing that because of the premium being paid by Scottish Power property valuations increase thus increasing property taxes. If there is the remotest possibility that property taxes go up directly as a result of this merger, such an affect and how it would be dealt with by this Commission should rest with PacifiCorp. Clearly this proceeding is not designed to set property taxes. However, if property taxes do increase directly as a result of the premium being paid by Scottish Power, such a negative impact on customers needs to be reviewed by the Commission. Clearly, PacifiCorp has the burden to demonstrate that the premium being paid by Scottish Power will have no

²For example, in the last merger order the Commission imposed conditions dealing with employment and local community issues.

negative effect on customers.

3. Speculative Issues (p. 8).

The company has listed a number of issues which they classify as speculative, i.e. regarding future events. They include in this category such issues as divestiture, creation of separate business units by Scottish Power, repeal of PUHCA, the attitude of the company on special contracts, and certificate transfer. Although such issues may be speculative and based on possible future events, the company should have an obligation to disclose its plans, if any, to divest assets, eliminate special contracts, or otherwise effectuate any of these items listed as “speculative.” Obviously, a divestiture of assets or creating separate business units would have an affect on the public interest and, therefore, the company should have the burden to disclose any plans it has to effectuate these items.

DATED this _____ day of April, 1999.

By _____
Michael Ginsberg
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing RESPONSE OF THE DIVISION OF PUBLIC UTILITIES TO APPLICANTS' ISSUES MEMORANDUM to be served upon the following persons by mailing a true and correct copy of the same, postage prepaid, to the following on the _____ day of April, 1999:

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