

1 BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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_____) 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

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Salt Lake City, Utah

9

May 4, 1999

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9:05 a.m.

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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.

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1 May 4, 1999

9:05 a.m.

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3 PROCEEDINGS

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5 CHAIRMAN MECHAM: Let's go back on the
6 record in Docket 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. We are here again to talk about the issues
10 that we'll address in this matter. Let's take
11 appearances for the record, please.

12 MR. HUNTER: Edward Hunter representing
13 PacifiCorp.

14 MR. BURNETT: Brian Burnett, Callister,
15 Nebeker and McCullough representing Scottish Power.

16 MR. CRABTREE: David Crabtree representing
17 Deseret and its members.

18 MR. PETERS: Bill Thomas Peters, Parsons,
19 Davies, Kinghorn and Peters appearing on behalf of

20 Emery County.

21 MR. MATTHEIS: Peter Mattheis on behalf of

22 Nucor Steel.

23 MR. DODGE: Gary Dodge on behalf of the

24 Large Customer Group.

25 MR. REEDER: Good morning. I'm Robert

1 Reeder, Parsons, Bailey and Latimer. We appear for
2 the large industrial customers, known as UIEC.

3 MR. ALLRED: Steven Allred appearing for
4 the Utah League of Cities and Towns.

5 MR. MCNULTY: Matthew McNulty, Van Cott,
6 Bagley, for UAMPS.

7 MR. GINSBERG: Michael Ginsberg, Division
8 of Public Utilities.

9 MR. TINGEY: Doug Tingey for the Committee
10 of Consumer Services.

11 MR. FARR: Brian Farr for the Department of
12 Community and Economic Development.

13 MS. WALKER: Joro Walker for the Land and
14 Water Fund.

15 MR. JOHNSON: Charles Johnson for the
16 Community Action Program and Crossroads Urban Center.

17 CHAIRMAN MECHAM: Thank you. We've read
18 the parties' statements. Does anyone want to
19 elaborate -- it's not a command performance -- before

20 we ask a few questions?

21 MR. HUNTER: How about respond rather than

22 elaborate?

23 CHAIRMAN MECHAM: Okay. Go ahead and

24 respond.

25 MR. HUNTER: Preface: Despite some of the

1 statements to the contrary, the applicant has tried
2 to be very restrained in the issues they asked the
3 Commission to exclude. We only asked that the issues
4 be excluded that not only weren't relevant, that are
5 beyond the Commission's current authority, like
6 restructuring remedies, and would substantially
7 expand the scope of the hearings. We tried to
8 carefully use those criterion.

9 As a result, we only asked that the
10 Commission exclude four issues. First, obviously,
11 was industry restructuring.

12 There were some complaints about the fact
13 that our definition of industry restructuring wasn't
14 exhaustive. What we did -- the definition that was
15 included in the parties' issues statements, that's
16 one of our concerns. They didn't define it, so we
17 weren't able to do it much better.

18 The responses to our pleading basically on
19 this issue basically took the position that the

20 Commission shouldn't give up any potential remedies

21 it might otherwise have.

22 The UIEC, for example, recognized that

23 restructuring is a remedy for concentration. And

24 it's tough to come up with an argument as to how

25 there could be increased concentration in this case

1 when the same utility will be serving the same
2 customers, using the same facilities, both before and
3 after this merger.

4 But despite that, they cite the Sierra Nevada
5 FERC case as an example of when a restructuring
6 remedy was used to address concentrations of power.

7 I point out a couple of things. That in the
8 case of the Sierra Pacific Nevada merger, it had two
9 utilities not only in the western United States; in
10 the same state.

11 Also, as you can tell from reading the order
12 that the FERC did not decide that generation
13 divestiture was an appropriate remedy.

14 What they did say is that because divestiture
15 had already been agreed to in the context of
16 deregulation in Nevada, they didn't have to look at
17 concentration issues; they didn't have to do more
18 analysis of competition; specifically did not decide
19 whether a spinning off generation was appropriate,

20 whether they had the authority to do that, or whether

21 it was a remedy for any potential problems they

22 found.

23 UIEC also mentioned that in the U.K., there

24 was a remedy or a condition agreed to which involved

25 putting generation in a separate company.

1

2 Once again, the U.K. is a deregulated market.

3 In the context of deregulation in the United Kingdom,

4 Scottish Power has agreed that generation will be put

5 in a separate company. It is part of the an agenda

6 that deals with deregulation. It isn't separately

7 related to this merger, although it was agreed to in

8 the context of discussions about this merger.

9 COMMISSIONER WHITE: Do you mind a question
10 about that?

11 MR. HUNTER: Please.

12 COMMISSIONER WHITE: Do you know if there's

13 any -- anything about the conditions in Britain that

14 they're putting into a separate company that could

15 affect operations in this country? Or I think more

16 precisely my question is this: Is there anything

17 that could happen as a result of this merger that

18 could foreclose some of our options in the future in

19 dealing with things that arise?

20 MR. HUNTER: And specifically, the U.K.
21 conditions would not -- and you've raised a point
22 that UIEC raised also. They talk about, getting rid
23 of this issue will somehow protect the Commission's
24 ability to deal with things that might happen in
25 other jurisdictions.

1 We've handed out a copy of the order from the
2 Washington Utilities and Transportation Commission in
3 which they address industry restructuring and open
4 access. They state, this is not the time nor the
5 appropriate forum for discussion of these issues.
6 The evolving status of industry restructuring on the
7 state and national levels suggests this discussion be
8 deferred to a future proceeding.

9 COMMISSIONER WHITE: Even if I agreed with
10 that, and I may, what I'm saying is even if we don't
11 deal with restructuring in this merger case, are
12 there going to be some consequences of the merger
13 that mean that we have lost some remedies or some
14 flexibility in the future, if or when we ever do
15 address it?

16 MR. HUNTER: I don't believe so. I can't
17 imagine how they would be. For example, your
18 regulatory jurisdiction is going to remain unchanged.
19 The Commission's going to have the same level of

20 jurisdiction over this utility that it has now.

21 COMMISSIONER WHITE: Well, and as I
22 understand it, it's going to be a different corporate
23 structure with a holding company, which isn't the
24 case now. Does that change our jurisdiction at all?

25 MR. HUNTER: No. And we've provided

1 discovery addressing that, and we will provide -- we
2 do agree that's an appropriate issue and a relevant
3 issue. And we will address that in this proceeding.

4 But we have in discovery answered that
5 question that no, it does not. It will not affect
6 your regulatory jurisdiction. In addition, the
7 Legislature will continue to have authority to adopt
8 a restructuring environment. In fact, that's one of
9 our points.

10 The other point is we don't know exactly what
11 the Commission is going to protect against. The
12 Washington Commission specifically declined to
13 address this.

14 FERC in the Sierra Nevada context has
15 language in which they specifically declined to deal
16 with RTO and transmission issues which were raised by
17 UAMPS and others in that context under the same --
18 with the same statement, that this is not the time
19 and the place. The merger isn't the place in which

20 to decide restructuring industry issues.

21 There also was some feel, if you read their

22 statements, that this is no big deal. We beg to

23 differ. Changing the rules of competition for

24 monopoly regulation in the state of Utah in the

25 electric industry is a big deal.

1 The Commission and the company were involved
2 in proceedings before the Legislature, they're still
3 going on, involved in a proceeding before this
4 Commission to look at the merits of that. Those
5 decisions should be made when there's information and
6 the issue is squarely before the Commission.

7 We don't think that the Commission has the
8 authority to adopt that remedy, nor do we think the
9 Commission would want to do anything to preclude the
10 future of legislative action.

11 For example, if the Commission decided an RTO
12 should be formed, the Legislature is foreclosed from
13 deciding maybe it should have been a transcom. Maybe
14 something else should have happened in the context of
15 deregulation in the state of Utah. We don't think we
16 want to be in a position of precluding whatever the
17 Legislature might decide to do.

18 The next one we addressed was annexation. My
19 understanding, UAMPS can speak to it, but after

20 reading their pleading, it appears annexation is no
21 longer an issue before the Commission, that UAMPS has
22 decided to withdraw that issue.

23 Municipalization. The League of Cities and
24 Towns begins by identifying all the reasons why the
25 Commission doesn't have authority. The munis have

1 separate authority to decide to become municipal
2 utilities. They have separate authority to control
3 their public ways and streets.

4 They say that the Commission doesn't have
5 jurisdiction over franchise related matters. Despite
6 that, they come to the conclusion that this provides
7 an orderly forum for municipal self-determination
8 issues.

9 Obviously, we disagree. In fact, there's a
10 Division statement which sort of sums it up for us.
11 Likewise, a municipality's right to acquire a public
12 utility's property appears irrelevant to this
13 proceeding. A municipal has a right to acquire
14 public property, and continuing down, this merger
15 does not have any effect on those rights.

16 It's absolutely true. The rights of
17 municipals to do what they want to ask the Commission
18 to do in this proceeding are both a matter of
19 contract and a matter of statute.

20 We have contracts, franchise agreements, with
21 all, or almost all -- I'll defer to Mr. Allred, who
22 indicates there might be a couple we don't have
23 franchise agreements with -- in which these matters
24 are spelled out, whether or not they have a right to
25 purchase property, whether or not they have the

1 additional rights they talked about. He mentioned
2 several. The most favored community clause.

3 Assuming that -- I take for granted the
4 Commission does have the authority, if they wanted
5 to, to set up a municipal tariff and determine that
6 municipal rates should be a certain amount.

7 I don't think that's what the League is
8 talking about, though. I think they're talking about
9 that the Commission somehow as a condition of this
10 merger would impose a municipal right in which
11 anything that was granted to another municipality
12 would automatically be granted to Salt Lake
13 municipalities.

14 I don't think the Commission has that
15 authority. I don't think it's wise public policy.

16 And in addition, we have contracts, as I
17 mentioned, that specify those matters. And when
18 those contracts expire, the parties will negotiate
19 and determine what the appropriate terms are.

20 What the munis are actually asking for is
21 Commission forced amendment or abrogation of those
22 contracts. In addition to the other problems we see,
23 we think that runs afoul of our Constitutional
24 protections.

25 COMMISSIONER WHITE: You raised the issue

1 of fair market value of PacifiCorp's facilities.

2 MR. HUNTER: Yes.

3 COMMISSIONER WHITE: Some of the parties
4 indicated that because of the way the transaction was
5 valued, property taxes may well go up, and that would
6 be passed on to ratepayers.

7 Do you think it's a relevant issue, and do
8 you think that PacifiCorp should be proposing a way
9 to deal with that or mitigate it?

10 MR. HUNTER: That's a burden, and we do
11 agree that's an issue in this proceeding. Our
12 response has been -- our problem is that we don't set
13 property taxes. We can tell you how we're going to
14 account for merger property and the reasons why we
15 don't think that will have any impact on property
16 taxes.

17 When we talk about shifting the burden, I
18 don't know what that means. Do I have to prove
19 somehow the entity that sets property taxes is not

20 somehow in the future going to change how those
21 property taxes are set?
22 Under the current methodology, using a
23 purchase method of accounting, here's the reason
24 property taxes won't change. And our only point was
25 that to the extent people see a problem with that, an

1 additional burden resulted from this merger, that
2 they file testimony and they tell us why so we have
3 an opportunity to address that. We don't think there
4 is a problem.

5 Also, quickly, the League indicated that they
6 thought the Commission had the authority based on the
7 CP National decision, which was based on identical
8 facts.

9 As the Commission undoubtedly knows, that
10 case involved the purchase of additional facilities,
11 additional customers, additional service territories
12 in southern Utah, was a purchase that was contested.
13 The munis down there made a competing offer.

14 And this Commission, based on what they
15 thought was an increased concentration of monopoly
16 power -- the company was going to increase its
17 ownership in transmission, increase its concentration
18 of power in the state -- granted options.

19 Our perception -- and I've looked at the

20 briefs and gone through it. The case that Mr. Allred
21 refers to stands for the proposition, as Mr. Dodge
22 explained it, if you don't appeal something, then you
23 don't have a determination of whether or not the
24 Commission had the authority. The company didn't
25 appeal.

1 What the court said, and there is a quote,
2 the rest of the quote that was left out of the piece
3 that Mr. Allred put in. It did not take an appeal
4 from and does not now assail earlier orders from the
5 Commission which required UP&L to negotiate with the
6 municipalities on that subject.

7 Absolutely true. What the court was saying
8 is you didn't appeal it before, so you certainly
9 can't, in the context of the Commission, who had
10 reserved authority to deal with the options, complain
11 now that they don't have authority to change those
12 options. And we don't contest that's true. If you
13 don't take something off on appeal, you live with the
14 consequences.

15 Once again, however, that involved the
16 situation in which there were not existing contract
17 rights. As I pointed out, here we have 200 contracts
18 with 200 individual municipalities that spell out
19 terms.

20 Granting options in the context of this case,
21 or other rights, would force changes in those
22 contracts, forced changes. Obviously, we're not
23 going to agree to them.

24 Or potentially, if you granted options, the
25 threat that the entire PacifiCorp system in Utah

1 could disappear without the control of this
2 Commission and without our control, we don't think
3 that's wise public policy. We certainly don't think
4 it's within the Commission's jurisdiction.

5 The final issue that we asked the Commission
6 exclude was competition. And our problem with
7 competition is once again definition. The parties
8 that raised competition talked about it in the
9 context of competition between rurals, between
10 publicly owned, between munis and PacifiCorp.

11 The state of Utah has a statutory framework
12 under which the company has certain rights to provide
13 service. Munis have certain rights. DG&T has
14 certain rights. To the extent there are changes,
15 there's a process you go through to do that.

16 And we would only encourage the Commission,
17 to the extent that parties want to look at those, to
18 force them to take it up in the right forum or the
19 right case before the Commission.

20 Thank you, that's all I have.

21 CHAIRMAN MECHAM: Thank you, Mr. Hunter.

22 Mr. Burnett? Wasn't Mr. Hunter speaking for you?

23 MR. BURNETT: Only to the degree that he

24 covered the subjects we were talking about. I have

25 just a little bit more to add.

1 CHAIRMAN MECHAM: Go ahead.

2 MR. BURNETT: We always appreciate his
3 comments, though.

4 MR. HUNTER: Thank you.

5 MR. BURNETT: I just wanted to add a couple
6 of things. One of them, industry restriction. We
7 passed around Senate Bill 15 which became effective
8 yesterday as the law of the land in the state of
9 Utah.

10 Essentially asked the Commission to work with
11 the task force in the Legislature to deal with that
12 particular issue. The Legislature intends to deal
13 with that issue, it's dealing with that issue, it's
14 asked the Commission to help them with that. That's
15 the appropriate forum.

16 In regards to just as a follow-up to
17 Commissioner White's question regarding will anything
18 that's happening in the U.K. affect or foreclose the
19 Commission or the Legislature's ability to deal with

20 restructuring?

21 This is a stock purchase transaction.

22 PacifiCorp stays in place. Its jurisdictional

23 requirements are the same. The Commission's

24 jurisdiction over PacifiCorp remains the same.

25 So really, in that respect, we don't believe

1 that any impact or any condition that occurs in the
2 U.K. would have any impact whatsoever on
3 restructuring in the United States.

4 COMMISSIONER WHITE: Mr. Burnett, let me
5 extend that question a bit, then. What about other
6 actions that a company could take to restructure
7 itself if the merger were approved and the company
8 then decided to break up or -- you know, do anything.
9 Any one of a number of things.

10 I think that's what concerns me also is the
11 company's ability to take away some of the options
12 that wouldn't have happened absent a merger.

13 MR. BURNETT: Well, but the question you
14 really asked is what's happening in the U.K. They're
15 taking actions in the U.K. to deal with U.K. issues;
16 not necessarily to deal with what restructuring might
17 be in the United States.

18 So requiring them to keep separate books on
19 unregulated activities. As Mr. Hunter mentioned. In

20 the overall context of deregulation, they're having

21 to spin off their generation.

22 But those are things they're dealing with

23 restructuring in the U.K. It doesn't have an impact

24 on PacifiCorp in the United States.

25 So I just wanted to reiterate that point. We

1 don't believe that the conditions there have an
2 impact on any potential restructuring that would
3 occur here.

4 MR. HUNTER: I point out, you have an
5 existing rule and we're subject to an existing
6 condition that requires us to apply to you, provide
7 notice of any activity like that that we wanted to
8 undertake. It's not going to change that. We have
9 to come to you and tell you about it before we try to
10 do anything like spin off assets, sell assets.

11 In fact, your rule specifically says that if
12 we want to transfer property devoted in service in
13 the state of Utah, or whose costs are allocated in
14 the state of Utah, that we have to come to you.

15 COMMISSIONER WHITE: It's your position
16 that would be an appropriate time to deal with those
17 questions, not in a merger application?

18 MR. HUNTER: Well, from our perspective, we
19 don't have any plans to do any of that.

20 MR. BURNETT: I'd like to take a few
21 moments, if I may, to deal with the rest of our memo.
22 Obviously, the burden of proof is a concept that's
23 been discussed and written about to some length,
24 depending on the party involved.
25 We are not shirking our duty to respond and

1 provide adequate evidence regarding the burden.
2 There has been some -- a little misunderstanding
3 about what that is. We are actually asking under
4 54-4-31 to have the Commission approve the stock
5 issuance, which they can do if it's, quote, in the
6 public interest.

7 Some parties have referred to other sections
8 of the statute. They're inapplicable because they
9 deal with two utilities in a state merger. This is
10 the statute we come and ask the Commission about.

11 Is there any case law on what the public
12 interest means? Yes. They're largely transportation
13 cases. And they have the most recent one -- that
14 particular one, interpreting that particular statute,
15 is Milne Truck Lines where the court stated, in
16 administrative matters such as this, there must be
17 findings on all material issues.

18 I would distinguish many of the cases, and
19 particularly those Mr. Dodge referred to, as

20 ratemaking cases. But we're not shirking our

21 responsibility on burden.

22 However, on things which are outside the

23 Commission's jurisdiction, and even in situations

24 where the Commission has jurisdiction, we -- we have

25 an obligation to provide substantial evidence to

1 support the Commission's findings on those issues.

2 On matters outside the Commission's
3 jurisdiction, what we've asked for is essentially --
4 and in the order the Commission issues in the Utah
5 Power PacifiCorp merger, which we passed out today,
6 the Commission essentially found that issues outside
7 the Commission's jurisdiction required other parties
8 to come forward and show why they should be included
9 in the hearing.

10 Not that they couldn't be included at all; we
11 haven't asked for that. Just that the other parties
12 have an obligation to throw some testimony out we can
13 respond to. Otherwise, we're forced to prove a
14 negative, in many circumstances.

15 If the parties are interested in bringing
16 those things forward, that's fine. We haven't said
17 they could not do that; we've just said they have an
18 obligation to do it.

19 And we have set forth in our memorandum

20 certain issues which we believe would fall into that
21 category. And in some circumstances, people haven't
22 necessarily disagreed with that.

23 Hunter plant costs, I believe Mr. Crabtree
24 has agreed to file testimony regarding that
25 particular issue. We think it's a matter of

1 government by contract. We don't necessarily think
2 we should worry about that particular provision. But
3 if Mr. Crabtree wants to file testimony on that, we
4 haven't said he couldn't; we're saying he has an
5 obligation to bring that forward.

6 He has the burden of proof on that issue. If
7 he files a prima facie case and meets that burden,
8 the burden of persuasion shifts to us. In the
9 overall context on the issues, certainly we have the
10 burden of proof.

11 On the fair market value of PacifiCorp's
12 facilities, again, I have been to -- in front of the
13 Tax Commission with Mr. Peters on utility evaluation.
14 I don't recall being in front of this Commission on
15 utility evaluation. The Tax Commission has the
16 jurisdiction to set those issues.

17 Mr. Peters wants to bring that in? We're not
18 foreclosing him from doing that; we just want him to
19 file testimony on that, and we'll respond.

20 Similarly, workforce, local control, economic
21 development, those type of issues fall into that
22 category. Again, we're not attempting to keep those
23 issues out of the Commission's purview. They may, if
24 parties bring forth evidence, they may be relevant.
25 But they have an obligation to show why they're

1 relevant. Because we believe they're outside the
2 jurisdiction of the Commission.

3 On environmental issues, in my lifetime, I've
4 done a little environmental permitting for utility
5 power plants. I don't recall coming over here to ask
6 the Commission to deal with my air permits or my
7 water permits or my groundwater permits. Doesn't
8 happen.

9 We've said we'll be good environmental
10 stewards; I believe that's all we have to say. We're
11 obligated by law to comply with our permitting
12 process. That's what we have to do. We said we'll
13 do that.

14 If parties want to spend valuable Commission
15 time dealing with regional haze, for example, which
16 is a complex issue, which would be a complex issue
17 whether Scottish Power was here or not here, then I
18 want them to file testimony showing why we should
19 spend time.

20 You could probably spend seven days of
21 hearing time on regional haze if you wanted to. It's
22 an interesting issue. Is it relevant to this
23 proceeding? I don't think so.
24 Have the people pony up the evidence. Have
25 them come forth and say why this is relevant for this

1 particular proceeding. That's all we're asking on
2 these issues.

3 Undergrounding, a similar situation. There
4 are other Commissions which deal with that.

5 On speculative issues, we said we have no
6 intentions of divesting ourselves of assets. As a
7 matter of fact, we've been very consistent on that.
8 Scottish Power likes PacifiCorp as the way it was --
9 as the way it's structured, and they have no interest
10 in selling off assets.

11 So I don't know what else we should put
12 forward on that particular issue. If a party has an
13 interest in bringing that forward and they want to
14 file testimony on it, that's fine. But it should be
15 their burden.

16 Again, creation of special business
17 interests, we have that same concept. On PUHCA, the
18 issue was raised, what if the law is repealed?
19 Again, that's speculative. We have to deal with the

20 laws that are in front of us, and the Commission has

21 an obligation to deal with the application in front

22 of it. Not things that may occur in the future.

23 Special contracts, same issue. The

24 Commission set forth a task force in the last rate

25 case. That is the place to deal with special

1 contract provisions. We've said we'll participate in
2 that. We'll honor all existing contracts. That's
3 our position.

4 If someone wants to bring forward evidence on
5 that, that's a problem. They can, and we'll respond
6 to it. But again, we have really nothing other than
7 through the task force that we can do in that
8 particular situation.

9 The Commission has made it clear that's where
10 they want to review that issue. We're happy to
11 participate in that process. They want to bring on
12 evidence in this particular proceeding, why the
13 Commission should deal with special contracts, which
14 again could probably take seven days of hearing time,
15 which is what we scheduled -- they can't. We're not
16 saying they can't, but it's their burden to bring it
17 forward. Then we'll respond.

18 If they meet their prima facie case showing
19 why it's relevant, why it should be in, the burden

20 shifts to us. Fine. Again, we have that overall

21 burden of proof.

22 The same type of situation with certificate

23 transfer. And the other issues we've listed there.

24 So I guess in summary, what I'd like to say

25 is we asked for very few issues be knocked off the

1 table. Competition and deregulation you could lump
2 together. Some parties have, some parties split it
3 apart. Municipalization and annexation.

4 Now, if my information is correct, Mr.
5 McNulty has withdrawn that particular issue from this
6 Commission's relevant issues. So you're down to --

7 CHAIRMAN MECHAM: Let's just make sure
8 that's true. I mean, I read what you wrote, Mr.
9 McNulty. I thought you were sort of provoking the
10 company a little. Is annexation off the table?

11 MR. MCNULTY: Annexation with their
12 pleading is off the table.

13 MR. BURNETT: We're down to two things:
14 Municipalization, deregulation competition. S.B. 15.
15 It's the law of the land. We've got to live with it.
16 The Legislature intends for deregulation and
17 competition be handled through that task force. I
18 don't think there's anything else we can do about it.
19 I don't think there's anything else that should be

20 said about it.

21 Mr. Hunter's covered the issues regarding
22 municipalization. I believe that they're handled
23 separately through statute. They have the rights
24 they have.

25 On all the other issues, essentially, we've

1 said, let those parties come forward and put on
2 testimony. If they want -- we have an obligation in
3 the overall context of this application, we have the
4 burden of proof. We're not shirking that. But on
5 specific issues which are outside the Commission's
6 jurisdiction, which are speculative, let the other
7 parties put on evidence, and we'll respond to it.

8 That's all I have.

9 CHAIRMAN MECHAM: Thank you. We'll let the
10 other parties talk specifically about your filing.
11 But let me just ask, with respect to what Mr. Burnett
12 just said, none of you were contemplating that
13 Scottish Power or PacifiCorp would come forward with
14 affirmative testimony on the issues that you're
15 raising, were you? Or were you expecting to file
16 testimony addressing those issues to which they would
17 file rebuttal? I'm trying to understand how you
18 expect this to work.

19 MR. REEDER: It's a bit premature at this

20 point to conclude whether or not this case is too
21 thin to withstand a motion to dismiss. It may be
22 that they would need to reserve the right to file
23 testimony to address some of the issues after you
24 define what the issues are.

25 If there are issues that are germane in this

1 case, issues that are necessary for the Commission to
2 determine that the public interest is indeed met,
3 that we know that there is indeed a benefit that
4 arises from this merger, a benefit that isn't
5 otherwise cognizable through other behavior, that
6 it's measurable in some fashion, and it is to the
7 benefit of the ratepayers -- if you reach that point,
8 there still may be testimony that needs to be filed.

9 I think it's premature. When this schedule
10 was set up, it's premature. We're still in
11 discovery. There are several issues out there that
12 we think, some of the issues Commissioner White was
13 talking about, may affect the public interest, and
14 you may need and desire and should probably direct
15 some testimony on those issues before the matter is
16 through.

17 So yes, the situation could well arise where
18 additional testimony could be required from the
19 applicant to address those issues rather than simply

20 trying to shirk them.

21 CHAIRMAN MECHAM: Well, I don't disagree

22 with that. But normally, wouldn't that come up --

23 MR. REEDER: Normally, it would come up on

24 a motion to dismiss. This proceeding may substitute

25 for a motion to dismiss when you decide what the

1 issues are. If this filing is naked on those issues,
2 they may need to file more testimony.

3 COMMISSIONER WHITE: The issues that you
4 specifically identify as being relevant, are those
5 ones you've raised in your pleading for today's
6 hearing?

7 MR. REEDER: Some of them, yes.

8 COMMISSIONER WHITE: There's others?

9 MR. REEDER: What we've raised in our
10 pleading, the restructuring issue. Others raised
11 other issues that were focused on those. We tried
12 not to duplicate everything that was said.

13 CHAIRMAN MECHAM: Since you're on
14 restructuring, Mr. Reeder, again, I'm getting back to
15 how you would envision that issue being addressed in
16 this case.

17 MR. REEDER: Let's go to some of the
18 questions Commissioner white asked. I think it's
19 important that we understand what it was about

20 behavior of these applicants that compelled U.K.
21 regulators to compel separation of generation from
22 transmission.

23 It was not legislatively mandated. It was
24 not regulatorily mandated in advance of this merger.

25 This is something that regulators saw in the

1 application in this case as necessary to protect U.K.

2 ratepayers.

3 What did they see? We don't know. Why did
4 they order it? They thought it was probably the best
5 way to protect. Are we subject to the same kind of
6 actions? We don't know.

7 I think that's a fair area for inquiry. We
8 need to know, is there any reason that we should have
9 any lesser or different protection than the U.K.
10 ratepayers have from the behavior that compelled
11 those remedies in the U.K.?

12 A couple of other issues with respect to
13 restructuring, Commissioner White's focus. There
14 were significant jurisdictional changes that may well
15 occur as a result of this merger and independent of
16 this merger while we're in the process.

17 Remember, they're now going to form a holding
18 company. When they form a holding company, that
19 holding company becomes subject to SEC jurisdiction,

20 and capital allocation rules go to the SEC.

21 What impact those rules will have on the

22 jurisdiction of this Commission in terms of approving

23 and obtaining adequate capital to secure improvements

24 in the state of the future becomes a question.

25 CHAIRMAN MECHAM: They agreed with respect

1 to the holding company, they would take that issue up
2 in this case.

3 MR. REEDER: That, we think, is an issue
4 that needs to be addressed.

5 CHAIRMAN MECHAM: I don't think they
6 disagree with you on that.

7 MR. HUNTER: We don't.

8 MR. REEDER: The second, with respect to
9 transmission. Assume transmission gets moved to an
10 RTO. If transmission gets moved to an RTO, what does
11 that do to your jurisdiction? We know FERC has
12 exclusive jurisdiction over transmission.

13 If, as we all expect, RTOs will become center
14 stage for the next several weeks, what does that do
15 to this Commission's jurisdiction with respect to
16 regulating? And particularly when we need capital to
17 expand the transmission system and it goes to a FERC
18 jurisdiction?

19 Shouldn't we inquire, shouldn't we know,

20 shouldn't they present some evidence on that topic so

21 that some period of time in the near future, we're

22 not blind-sided with the inability to grow the

23 transmission system, should it be necessary?

24 COMMISSIONER WHITE: That seems to me it

25 would be an issue -- it's a plausible issue whether

1 or not Scottish Power is in the picture. Wouldn't
2 RTOs come as a result of FERC action and not as a
3 result of a merger?

4 MR. REEDER: The two issues of a public
5 utility holding company having jurisdiction over the
6 holding company and transmission jurisdiction moving
7 out, and now design remedies to ensure there's
8 adequate inflow of capital to assure that
9 transmission facilities can be expanded when
10 necessary in the state of Utah. What should you do?

11 I think you need to hear evidence on that
12 issue. I think you need to issue conditions with
13 respect to those issues that assure an outcome that
14 protects the public interest.

15 COMMISSIONER WHITE: Again, it's your
16 position that that is most appropriately handled in
17 the context of this merger application?

18 MR. REEDER: It is. This is the time where
19 you're going to have an opportunity to make an order

20 that would protect the ratepayers in the state of
21 Utah in the future to ensure capital can be acquired.
22 In most transactions of this nature, it is
23 the case there's an undertaking by the applicant to
24 ensure adequate capital inflow to build the
25 infrastructure so that it can continue to meet the

1 public interest standard, can continue to serve the
2 public interest. I think that's an inquiry you need
3 to make.

4 COMMISSIONER WHITE: What I'm looking for
5 is somebody to propose specific conditions.

6 MR. REEDER: If we look at the conditions
7 that were imposed in the U.K., you'll find it
8 interesting.

9 Number one, there may be dividend
10 restrictions so that capital may stay at home.
11 Number two, there may be cross default prohibitions.
12 Number three, you may look for specific allocation of
13 capital to this jurisdiction for expansion. We've
14 asked about it and haven't been getting satisfactory
15 answers --

16 COMMISSIONER WHITE: Isn't that something
17 we can do in the context of a rate case or otherwise,
18 with or without a merger?

19 MR. REEDER: You may not have the authority

20 to control the capital allocation of this company in
21 the future when it becomes a subsidiary of a holding
22 company.

23 CHAIRMAN MECHAM: And that's a relevant
24 issue.

25 COMMISSIONER WHITE: So in your mind, is

1 that something that your parties plan to propose very
2 specific conditions and the reasons for them, or do
3 you believe that it's the applicant's burden to
4 propose conditions?

5 MR. REEDER: I think the applicant needs to
6 satisfy you that the consequences of this merger and
7 the changing jurisdiction, and the changing
8 conditions with respect to the assets that can be
9 pledged to raise capital, don't impair the ability to
10 raise capital at future points in time.

11 MR. GINSBERG: May I make a comment?

12 CHAIRMAN MECHAM: Yes.

13 MR. GINSBERG: It strikes me that some of
14 the issues Mr. Reeder is raising, dealing with
15 capital inflow, making sure that there's adequate
16 capital flowing into the state because of the holding
17 company structure, the dividend policy, or
18 intercompany loans -- those are issues in the
19 proceeding, but I'm not sure how those are

20 restructuring issues.

21 When I thought of -- when we filed our views
22 on restructuring, it seemed to be limited to whether
23 or not there would be direct access, whether or not
24 as a result of this proceeding there would be
25 vertical separation, or whether an RTO would be

1 formed.

2 It seems issues with respect to the corporate
3 structure, whether or not capital is adequate in the
4 state, whether for transmission, generation, or for
5 whatever, are issues that are relevant in the
6 proceeding.

7 We also seem to separate -- maybe that's the
8 problem with restructuring. It's so undefined what
9 that means. Mr. Reeder classifies dividend policy as
10 being restructuring. And maybe it is an issue. But
11 I didn't see where those fell under the broad
12 category of restructuring.

13 It seemed, though, that whether or not,
14 because of the corporate structure, future actions
15 were being limited in possible restructuring, which
16 is relevant -- it seems that if it was a result of
17 the corporate structure or otherwise, because of
18 Scottish Power that the Commission is losing powers
19 or some authority it may have otherwise with

20 restructuring, that that's a relevant issue.

21 I guess what we were interested in is not

22 having an issue was that this would be a proceeding

23 where areas that were more directly in the

24 Legislature, direct access --

25 CHAIRMAN MECHAM: Is that what you

1 intended, Mr. Reeder? Did you intend at the
2 conclusion of this merger to know whether or not
3 there would be direct access in this state?

4 MR. REEDER: No. We're not here to --
5 there may be circumstances arise in this case where
6 in connection with the special contracts issue,
7 direct access may be the only remedy we have
8 available. I'll let others speak to that. That may
9 be the remedy you have, appropriately.

10 No, we're not going to argue at the end of
11 this case that you should spin off generation and
12 bust it into units so it's hour by hour competition
13 or create a separate kind of energy.

14 There is another issue I think everyone needs
15 to recognize and it's important for the Commission to
16 address. There's a handsome premium being paid by
17 Scottish Power for the shares of PacifiCorp. The
18 PacifiCorp shares traded at a premium to book value.

19 With those facts in mind, there can be no

20 more claim for stranded costs. All of the
21 shareholders have been adequately and handsomely
22 rewarded for the investment they've made by getting a
23 bonus from PacifiCorp.
24 Because that's the case, in this case, the
25 Commission needs to make clear that the bonuses paid

1 for the shares, that resolves the stranded cost
2 issues that the old issues Utah Power & Light may
3 have, is resolved and done forever, and the bonuses
4 in this case don't create a claim for stranded costs.
5 You must address that now or forever be at risk on
6 it. It's an opportunity to do it.

7 COMMISSIONER WHITE: You don't think you
8 can raise those arguments later on when and if
9 there's a proceeding regarding stranded costs?

10 MR. REEDER: If you don't do it in this
11 case, there may be an investment with the expectation
12 those dollars may be recoverable as a stranded cost.
13 You need to guard against that.

14 CHAIRMAN MECHAM: That premium is a live
15 issue in this case.

16 MR. REEDER: I hope so.

17 CHAIRMAN MECHAM: I hadn't thought about
18 the other aspect.

19 MR. REEDER: That's the reason I'm here is

20 to help your thinking.

21 MR. HUNTER: Could I briefly state that the
22 premium -- obviously, Mr. Reeder hasn't followed
23 what's happened in the stock price. To the extent
24 that Mr. Reeder can look at the Scottish Power and
25 Utah Power stock prices, look at the way that premium

1 was determined, as he knows from looking at
2 discovery, and draw the conclusion there's a large
3 premium, I would love to see the math.

4 COMMISSIONER WHITE: You don't necessarily
5 concede the stranded cost issue?

6 MR. HUNTER: I think the stranded cost
7 issue is silly. But the premium issue is a serious
8 issue. I'd say people have to look at it seriously
9 and determine whether or not there is a premium
10 there, based on what's happened to the share prices
11 now.

12 MR. BURNETT: I would just throw in, I
13 don't think we can bootstrap that stranded cost thing
14 into this proceeding. That's kind of a stretch. But
15 there are a lot of different components that went
16 into the price. And to say that that forecloses any
17 discussion on stranded costs in the future is
18 stretching it a little bit.

19 COMMISSIONER WHITE: Mr. Reeder, if I might

20 back up a little bit. You mentioned some of your
21 concerns were about some company's ability to raise
22 capital and suggesting that we impose some conditions
23 on a merger.

24 MR. REEDER: Yes.

25 COMMISSIONER WHITE: Another one of the

1 concerns you raised was -- you suggested that the
2 Commission use some restructuring remedies to ensure
3 that ratepayers capture some of the benefits of these
4 efficiencies.

5 MR. REEDER: Yes. We were intrigued by the
6 notion advanced that the efficiencies may, to the
7 benefit of shareholders, cause this Commission and
8 other Commissions in the West to be in the slow lane
9 when it comes to capturing efficiencies through rate
10 setting or restructuring.

11 COMMISSIONER WHITE: I guess I'm pushing
12 you for specifics on how -- if this Commission
13 determines that it's appropriate to -- why does it
14 have to be --

15 MR. REEDER: Specifically, it would go this
16 way: Assume that it is the case that to grow this
17 company and to recover the premium, they choose to
18 enhance wholesale sales. How best can this
19 Commission assure that the growth in those wholesale

20 sales doesn't some way adversely affect ratepayers in

21 this jurisdiction?

22 The customary remedy for that in economic

23 terms is to establish a transfer price for

24 electricity from the generator to the reseller so

25 that the same price is faced by the wholesale

1 customers and the resale customers.

2 How do you establish that transfer price on
3 reasonable terms and conditions? Usually, that ends
4 up with some discussion about how you own and hold
5 generation. And if you have to address how to own
6 and hold generation, that generally leads to
7 separating generation from transmission.

8 COMMISSIONER WHITE: Don't Commissions
9 attempt to set transfer prices all the time?

10 MR. REEDER: They do, and they generally
11 encounter the inability to do it because they've got
12 a mixed revenue stream. They find establishing a
13 single transfer price by separating the assets is the
14 only efficient way to do it economically.

15 There are several steps you can take along
16 the way, all of which you will discover that your
17 colleagues have found inadequate in other places.

18 MR. HUNTER: Can I address that briefly?
19 Back to the future. Until 10 years ago, the

20 Commission addressed that issue simply, easily, and
21 like most other Commissions in the country do: They
22 decided whether or not to treat wholesale sales as a
23 FERC jurisdiction or a revenue credit.

24 To the extent that this Commission determines
25 that one is in the interests of the customers and one

1 is not, all they have to do is take the costs -- and
2 we already know how the Commission's decided to
3 allocate the costs. They allocate the costs and
4 revenues associated with wholesale sales to another
5 jurisdiction. And it falls out normally.

6 There is no need for divestiture. No one in
7 the country that I'm aware of has dealt with the
8 wholesale sale issue by divesting generation. They
9 do it as regulators always do, using their
10 jurisdiction. Somebody else picks up the costs so
11 your jurisdiction doesn't have to.

12 COMMISSIONER WHITE: Mr. Reeder, if we
13 don't follow your proposals on restructuring issues,
14 and if in the future we finally realize that you're
15 correct, can we impose those remedies at a later
16 date?

17 MR. REEDER: You may find yourself
18 handicapped.

19 COMMISSIONER WHITE: In what way?

20 MR. REEDER: The Commission's jurisdiction,
21 you'll discover, is somewhat limited. You have
22 broader jurisdiction in exercising the remedies to
23 assure that a merger is in the public interest than
24 you do in traditional rate cases.
25 Unless the Legislature increases your box of

1 tools to assure that efficiencies come from -- that
2 efficiencies are to the benefit of ratepayers, you
3 may not have an opportunity as you have here.

4 COMMISSIONER WHITE: Speaking of boxes of
5 tools. Is it your position that the Legislature --
6 that this Commission does have the authority to
7 impose some of the remedies you're proposing?

8 MR. REEDER: I think that you can condition
9 a merger. I think your ability to condition a merger
10 is far less constrained than your authority in some
11 other areas. I think that's universally the case in
12 merger kinds of approvals.

13 That's the reason that merger cases involve
14 such close looks into the future. To assure that the
15 behavior of the future is managed the best in the
16 interest of the public utilities. Because you don't
17 have that authority in a very meaningful way in most
18 rate cases.

19 COMMISSIONER WHITE: Let me add another

20 concern.

21 CHAIRMAN MECHAM: Well, but is that -- I

22 mean, does that explain your involvement in the case?

23 I mean, you want this merger conditioned, right?

24 MR. REEDER: This merger may well be a good

25 thing. We don't know until we've looked at the

1 bottom. But in order to assure that the positives
2 that can occur in this merger aren't consumed by the
3 high negatives this merger can also bring, yes, we
4 need to look at ways to assure that those high
5 negatives don't take away what positives there are
6 and take away from us the ability to enjoy the future
7 that's potentially ours.

8 CHAIRMAN MECHAM: And are you going to tell
9 us how those conditions are enforceable?

10 MR. REEDER: We're going to try. That is a
11 concern we all have is that in the merger, unless we
12 manage behavior by structure, that's the most
13 efficient way to assure that the merger conditions
14 are enforceable, is to order a structure in the
15 beginning. It's difficult to enforce them. So the
16 most efficient way, or restructuring tool, is to
17 assure it.

18 The second most efficient way is direct the
19 behavior after the fact. Then you're dealing with

20 penalties and that.

21 Yes, we think restructuring should be on the
22 table because that is the most efficient remedy to
23 assure future behavior occurs in the way you wish it
24 to.

25 CHAIRMAN MECHAM: As we've seen,

1 restructuring as you're defining it may be broader
2 than what others may define it as being?

3 MR. REEDER: Yes. We are not talking about
4 deregulating sales to retail customers at the moment.
5 There may come a time where we want to talk about
6 that again. At the moment, we're talking about the
7 structure before the entity that emerges from this
8 merger and how we need to structure it to assure that
9 the conditions necessary to assure that the future is
10 indeed ours.

11 Ordering them to do something two years
12 later, as we know, is sometimes difficult to enforce.
13 It's easier to condition the consummation of the
14 merger on their structuring themselves in a
15 particular way in the beginning so that we don't have
16 to manage their conduct in the future.

17 COMMISSIONER WHITE: Who do you think ought
18 to have the burden of proof on raising these
19 restructuring issues and proposing remedies for them?

20 MR. REEDER: I think that we need to have
21 the applicant explain to us what its view of its
22 business plan will be for the future, recognizing the
23 high likelihood, which is that they -- a regional
24 transmission kind of organization.

25 We don't know and have been unable to

1 discover how it is that they intend to proceed on a
2 going forward basis. I think this Commission needs
3 to know. I think that one of the things that you may
4 well order as a result of this morning's proceeding
5 is they file some kind of business plan that spells
6 out for you how they are going to resolve the
7 questions Mr. Ginsberg and I have been talking about:
8 Raising capital, how the capital will be allocated,
9 how the impacts of PUHCA and transmission reform may
10 impact their ability to raise and manage capital, who
11 will have responsibility for it.

12 CHAIRMAN MECHAM: Those issues are squarely
13 on the table, and they bear the burden.

14 MR. REEDER: They have not addressed them
15 to date.

16 MR. HUNTER: I disagree. We filed a joint
17 issue statement a long time ago. Guess what?
18 Organizational structure, broken down, we identify as
19 an issue. Impact on regulation, we break down as an

20 issue. We have in testimony, as a matter of fact,
21 identified why access to capital won't be affected.
22 We have identified why the Commission's regulatory
23 authority won't be affected.
24 To the extent parties don't think that was
25 sufficient, then they've got to tell us why. For

1 example, on restructuring, I still have not a clue
2 what Mr. Reeder has in mind with restructuring.
3 First we talked about cost of capital, regulation,
4 PUHCA. All issues, all things that we've addressed,
5 albeit not as well as he thought we should.

6 Then at the end of the discussion, he talks
7 about, but you might want to do something to
8 restructure them in a way you wouldn't be able to do
9 after the deal was approved.

10 So I think what Mr. Reeder has in mind as
11 restructuring is the way we all define restructuring.
12 Spinning off RTOs, the same thing he and Mr. Dodge
13 mentioned in their testimony and in their responses.
14 Not their testimony, their issue statement and their
15 responses. In fact, Mr. Dodge in his response
16 specifically talks about transmission, as in Mr.
17 Reeder's response.

18 To the extent they're changing their position
19 this morning in this discussion, I would like to know

20 that. Right now, I've got to rely on the response to
21 my issue statement in which they still define
22 restructuring to include spinning off RTOs, those
23 kind of things.

24 Those are the things we object to and don't
25 think they're issues in this proceeding. We, of

1 course, do not object to things that we raised as
2 issues, which are what Mr. Reeder talked about.

3 CHAIRMAN MECHAM: Thank you, Mr. Hunter, I
4 feel better now. Mr. Burnett?

5 MR. BURNETT: I think we could classify
6 this into two categories: Structuring of the
7 company, structuring of the industry.

8 Mr. Reeder -- as Mr. Hunter has mentioned,
9 company structure issues obviously are relevant. We
10 filed testimony on those.

11 Industry restructuring issues we have filed
12 testimony on, and we've essentially said we're not
13 coming here to tell folks what they have to do on
14 industry restructuring.

15 We'll participate in the process. We do
16 compete in the U.K. for our customers. But this
17 forum and this docket is not the case to bring up
18 industry restructuring.

19 And simply creating jurisdiction out of whole

20 cloth that you don't otherwise have and conditioning
21 it as part of the merger is not appropriate. You
22 either have jurisdiction, or you don't have
23 jurisdiction.
24 And the fact that we're in front of you with
25 an application should not change that matter. You

1 have what you have. And you shouldn't condition
2 something that you don't have jurisdiction on as part
3 of this application. That would be inappropriate.

4 MR. DODGE: Mr. Chairman, if I may react to
5 that. That's simply not the law. This Commission's
6 responsibility is determined -- is to determine
7 whether the merger as proposed is in the public
8 interest. Nowhere in the statute does it say the
9 public interest, constrained to those issues over
10 which this Commission has primary jurisdiction.

11 For example, if as a result of this merger
12 there were going to be adverse environmental effects,
13 adverse labor effects, adverse economic effects, over
14 which this Commission has no direct jurisdiction, but
15 if those could all be shown it ought to be, in fact,
16 it has to be weighed in your deliberations as to
17 whether those negatives are overcome by the
18 positives. There's no other body that weighs this
19 merger with the public interest in mind.

20 The fact they have to go to the Department of
21 Air Quality for permits and for violations doesn't
22 mean that they ever get the opportunity to weigh
23 whether the merger is in the public interest on those
24 kinds of issues.

25 I submit that the law is very clear. This

1 Commission looks at the overall public interest.

2 And I'm going to strongly disagree with
3 counsel for the companies. The ratemaking context in
4 which the Supreme Court said you look at the
5 shareholders' interests, you look at the ratepayers'
6 interests, then you conform those two to the overall
7 public interest and decide what's right.

8 That exact analysis applies in something as
9 important as a utility merger where there's no other
10 forum, there's no other ability to have those issues
11 considered.

12 Now, it's certainly a proper question whether
13 you can condition the merger in a way that is
14 meaningful or enforceable. In the last merger, you
15 applied some conditions like workforce related
16 conditions that you maybe didn't have ultimate
17 ability to enforce.

18 Those are realistic questions. Those are
19 ones you ought to ask us when we submit proposed

20 conditions. You ought to say, how are we going to
21 enforce this? How are we going to make sense of
22 this? If we can't answer that to your satisfaction,
23 you ought to say it's worthless for us to throw in
24 conditions that we can't enforce or they're not
25 meaningful.

1 But don't preclude us in this stage of case.
2 The fact that Mr. Hunter can't understand what we
3 mean by industry restructuring is precisely why you
4 ought not to enter an order saying, industry
5 restructuring issues are off the table. That
6 definition is very broad.

7 It would take more guts than I have to come
8 before you and say, condition this merger by opening
9 up the entire state of Utah to open access. I don't
10 think we'll ask that. If someone wants to, they've
11 got a pretty heavy burden to persuade you that's the
12 appropriate thing.

13 But the discrete parts that we may ask. Mr.
14 Reeder brought up one good point, and that is we're
15 trying to understand, or some of our clients, what
16 the implications on special contracts are.

17 The fact that there's a task force in terms
18 of how this Commission will deal with approval of
19 them is irrelevant to the issue of what this new

20 company's attitude and perspective is toward special

21 contracts. What if they have a corporate attitude,

22 we don't do them? We don't care about economic

23 consequences of losing big loads in the state?

24 CHAIRMAN MECHAM: In this case, would you

25 contemplate filing affirmative testimony on special

1 contracts and have them respond? I'm just trying to
2 figure out exactly what the parties expect in this
3 case.

4 MR. DODGE: Sure. You're struggling, I
5 think, like any good lawyer or judge would, in terms
6 of who's got what burden, where. I continue to
7 submit the burden of proof never, ever changes on any
8 issue. The burden of proof is on the company on
9 every single issue, to prove that notwithstanding
10 issues raised, and everything else, this is in the
11 overall net public interest.

12 That doesn't address burden of persuasion.
13 They've got the obligation to come forward and say,
14 here are all the reasonably anticipated consequences
15 of this merger. Not only the good ones that they
16 point out; the bad ones. They've got an obligation
17 to say there may be impacts here, here's how we
18 mitigate it, here's why we think it's still in the
19 public interest.

20 If someone thinks they haven't done that, the
21 proper remedy is a motion to dismiss. To my
22 knowledge, it hasn't been filed yet. I don't think
23 the Commission needs to address that, therefore,
24 unless you choose to on your own, whether it's
25 adequate to explain all of this. If someone files

1 it, you'll have to opportunity to either dismiss it
2 or tell them where they have to file additional
3 testimony.

4 As a practical matter, the burden of
5 persuasion shifts to all intervenors, the Division
6 and the Committee to come forward and either say they
7 haven't met their affirmative burden, dismiss it or
8 make them file their testimony, or to identify other
9 things they missed and persuade you that's relevant,
10 and they need to respond to it.

11 The way it's going now, we've got a deadline
12 for filing testimony on that date. People will begin
13 to identify those issues they think haven't been
14 adequately addressed and why. The kind of impacts
15 they see from the merger, why they need to be
16 seriously considered.

17 To prematurely cut off broad definitions like
18 industry restructuring, the areas that can be
19 identified, or even the conditions that can be

20 proposed, is I think a big mistake in terms of the

21 overall public interest consideration.

22 COMMISSIONER WHITE: Mr. Dodge, I have a

23 few questions about that public interest

24 consideration. I think what I hear people saying is

25 that the Commission can consider every factor,

1 including some for which we may have no
2 jurisdiction -- labor, environmental, all those
3 things. And if we think that the bad outweighs the
4 good, we could reject the application.

5 But there seems to be disagreement over the
6 downside of the merger, whether we just would use
7 them as possibly grounds to reject the application,
8 or whether we would impose conditions to resolve
9 those problems.

10 And I hear the company saying clearly that
11 this Commission cannot impose conditions in areas
12 where it doesn't otherwise ordinarily have
13 jurisdiction. And I -- are you saying that we can
14 impose conditions in any area?

15 MR. DODGE: There's a difference between
16 impose and offer. There are areas in which you can
17 impose conditions. For example, you could say, this
18 merger is approved as in the public interest. We're
19 imposing conditions, clearly within your

20 jurisdiction, things like to ensure reliability. To
21 avoid against the negatives of reliability. We're
22 going to impose this whole set of reliability and
23 access to capital type conditions.
24 You clearly have the authority to impose that
25 within your jurisdiction.

1 If you conclude that those conditions you can
2 impose in the merger as proposed still doesn't meet
3 that overall public interest standard, you have the
4 ability to turn it down, or you have the ability,
5 like nearly every Commission in this country has done
6 many, many times, to say in order for this to be in
7 the public interest, you, utility, would have to
8 voluntarily accept the following conditions. You
9 tell us whether you accept them or not. And if they
10 say no, the merger is not approved. If they say yes,
11 it goes forward.

12 You did that in the last merger. The FERC
13 did that in the last merger. The Nevada Commission
14 did it in the Sierra Pacific. You don't have to have
15 jurisdiction in the area to offer it as a voluntary
16 condition.

17 I accept, as an intervener, if I think one of
18 those voluntary conditions is something you ought to
19 insist upon before you impose it, I have the burden

20 of persuasion to convince you of that. No question
21 about that. And we intend to raise any of those that
22 we think you ought to impose in testimony.

23 But I'm just saying, don't cut it off at this
24 point, any of those remedies. Within or without your
25 normal jurisdiction.

1 MR. HUNTER: Can I address that? Let's
2 assume that Mr. Dodge voluntarily, absolutely agreed.
3 To the extent -- it's a truism. To the extent you
4 don't take it up to the Supreme Court, the
5 Commission's jurisdiction is absolutely irrelevant.

6 We'd point out this authority he talks about,
7 FERC, for example, when people actually take them up
8 on appeal, it has been held FERC can do, indirectly,
9 through conditioning a merger, what they can't --
10 haven't been granted authority to do directly.

11 Let's assume you could do this and you
12 decided it was in the public interest. In order for
13 you to have the factual foundation to impose those
14 conditions, we would have to have a record to support
15 them.

16 In the case of an RTO or something like that,
17 obviously, the record would be a ream of testimony
18 identifying what the problem was and why the RTO was
19 the solution. Why restructuring, divestiture, any of

20 these things were the solution.

21 That is a huge deal. I mean, that would take

22 a long time. It's something, also, from a practical

23 standpoint, that the Legislature will decide later.

24 The contract issue. Granting options,

25 granting most favored community status. Those are

1 huge deals. 200 contracts would need to be changed.

2 Undergrounding, for example. Mr. Allred's
3 franchise agreement specifically deals with
4 undergrounding in the franchise agreement. It says
5 it's subject to your jurisdiction, and we'll do it
6 just the way you determine we can do it. There is no
7 need and there is no ability and there is not a
8 practical way in which to address some of these
9 conditions.

10 And that's the reason we only identified
11 restructuring, which in our definition means
12 traditional restructuring remedies. Spinning off
13 transmission. Forcing someone to put their
14 transmission in a regional transmission organization
15 or in the Transco. Opening up the state of Utah to
16 competition on either a limited basis, giving special
17 contract customers, or those customers who can't get
18 special contracts, open access.

19 Those are not things that are appropriately

20 part of this record; would, in order to provide a
21 factual basis to do anything, consume huge amounts of
22 time that we don't think is prudent or necessary.

23 And those are the reasons why we wouldn't
24 like to address them here. It's not that we won't
25 have to address them later; the Commission will use

1 its authority to address them later. It's that the
2 merger is not going to affect those things. They're
3 things the Commission can do later on.

4 COMMISSIONER WHITE: I have a question for
5 you, Mr. Hunter. If what we're supposed to be doing
6 here is considering and weighing all of the possible
7 benefits from the merger and all of the possible
8 drawbacks from the merger, and approving it if one --
9 if the good outweighs the bad, I suppose -- are you
10 saying that we ought to only consider those areas
11 which fall within our jurisdiction, and any negatives
12 which aren't -- which we don't have authority over --
13 say, labor or perhaps environmental or other
14 things -- we ought not to consider at all in the
15 weighing process?

16 MR. HUNTER: I think you consider labor,
17 for example, in the context of will whatever policies
18 we talk about impact the price or the reliability of
19 service? I mean, your court jurisdiction and what

20 you worry about is how we perform our obligations as

21 a utility to provide service to our customers.

22 COMMISSIONER WHITE: If we say it looks

23 fine, looks like the company will be run very well

24 after the merger, prices will continue to -- all

25 that, you know, but if we say, well, it also looks

1 like a lot of people will be paid off and cities will
2 suffer because of their tax base -- some of those
3 outside areas -- should we just simply concentrate
4 our inquiry on will ratepayers be better off? Or
5 should we take these other things into account in
6 balancing?

7 MR. HUNTER: Let's turn it around to a rate
8 context. If the Commission decided economic
9 development was a desirable goal, then granting us
10 cost recovery of the expenses used for economic
11 development would certainly affect our behavior. The
12 Commission has not in the past decided to do that.

13 Employees. To the extent that the company or
14 that the Commission made a value judgment that
15 employing lots of people, no matter what the impact
16 on cost was, was a consideration that overrode the
17 determination about providing service at the lowest
18 possible cost, then they can let us know that that is
19 their determination, and we will act on it.

20 Right now, what we've got are clear signals
21 from the Commission that what you care about and what
22 you have within your purview is let's provide
23 service, reliable service, at lower costs. And
24 that's what we're acting on. To the extent the
25 Commission has a broader agenda than that, then we

1 can discuss that.

2 But yes, we do think that while these
3 issues -- and we haven't said these issues are off
4 the table; we've said other parties have to tell us
5 why they'll be affected by the merger. But we think
6 the core issues should be the things that we
7 concentrate on in this proceeding.

8 CHAIRMAN MECHAM: Let's go to Mr. Burnett,
9 and we'll let the other parties respond.

10 MR. BURNETT: The answer to your question
11 is, there's very little we've asked the Commission to
12 knock off the table. But the other issues we've just
13 said, let the other parties bring forward evidence.
14 Let them have the burden to bring forth evidence on
15 those issues and why they should be considered.

16 So if they want to bring forth evidence, we
17 haven't attempted in this proceeding to foreclose
18 those whatsoever. But we've said they have the
19 burden. Otherwise, we're having to run around and

20 prove negatives.

21 I don't know what's in the mind of DG&T or

22 Mr. McNulty's client. Requiring me to file

23 affirmative testimony on those things is difficult

24 and unreasonable to do.

25 We filed testimony on core issues. We've

1 asked very few things to be knocked off the table.

2 Industry restructuring, I think it's pretty clear the

3 Legislature thinks they're going to deal with that

4 issue. Municipal issues.

5 CHAIRMAN MECHAM: Except if this proceeding

6 is showing anything, it's that restructuring means

7 something different to you and to me than it does to

8 Mr. Reeder. There are live issues that he itemized

9 that you fully intend and have addressed to a greater

10 or lesser degree.

11 MR. BURNETT: But those are company --

12 CHAIRMAN MECHAM: We're going to have to

13 sort through some of these things.

14 MR. BURNETT: Those are company

15 restructuring issues, not industry restructuring

16 issues. Anything to do with our company, it's fair

17 game. You know. We need to talk to you about that.

18 Industry restructuring, I don't think so. I think it

19 should be off the table.

20 And the other -- I respectfully disagree with
21 Mr. Dodge's interpretation. I think the Commission
22 had it right in 1987 when they said, other parties
23 want to bring forth issues outside the Commission's
24 jurisdiction? They have the burden of showing why it
25 should be included. Then the burden of persuasion

1 shifts to me. Mr. Dodge files persuasive testimony

2 on this issue, I have an obligation to respond.

3 But requiring me to go around and guess what

4 the issues might be in people's minds and file

5 affirmative testimony, that's not appropriate.

6 CHAIRMAN MECHAM: Okay. Let's go to other

7 parties and see what the response is. Mr. Crabtree?

8 Do you have anything you'd like to say?

9 MR. CRABTREE: Yes. I guess as I sit

10 listening to this, I think the danger from our

11 client's perspective is in formulating an order

12 giving direction here on burden and issues relevancy.

13 We're concerned that you don't pick the

14 rubrics that seem to be so broad that there's

15 disagreement among these people and the parties, what

16 that means.

17 In other words, in throwing off the table,

18 for instance, all competition as sort of a general

19 rubric, we've pointed out competition and

20 anti-competitive concerns can mean a number of

21 different things.

22 Our clients are not here to raise federal

23 anti-competitive or anti-trust violations or to

24 allege them; we're here, rather, to raise concerns

25 which can be characterized as anti-competitive

1 insofar as this merger could result, for instance, in
2 a higher cost passed through to our customers, our
3 end customers.

4 Or to the extent, for instance, if the merger
5 will create lower quality and reliability of service
6 in rural areas, whether our customers and our members
7 would have to correspondingly cut back on their
8 service and reliability to maintain equivalent rates.

9 Those are our concerns. And so that's why I
10 say, don't throw off of the table in general rubric
11 or categories, broad categories of items, because
12 included within those can be specific items as to who
13 bears the burden of producing them.

14 I would say there are two issues. One is
15 whether the applicants in their testimony have
16 demonstrated whether to -- whether the Commission can
17 tell from that testimony what will be the effects on
18 the public interest. I think that is their burden.

19 If their concern is that they can't read our

20 minds or that they can't think of all the potential
21 elements of that, I think that's been the purpose,
22 frankly, of each party raising the issues by name.

23 And if the applicants choose not to address
24 it further, then I think the applicants do so at
25 their risk and should do so at their risk.

1 Likewise, speaking from my clients, we intend
2 to raise and produce testimony on those issues we
3 have raised and put them on notice. If we fail to do
4 so, I think we would be at risk somewhat, and I don't
5 see a real reason for much more guidance or direction
6 than that.

7 COMMISSIONER WHITE: I guess I have some of
8 the same questions for you I've had of other parties.
9 I don't really understand specifically what some of
10 your concerns are and how you would propose to
11 address them.

12 When you talk about service quality and
13 reliability, isn't that something that the Commission
14 has jurisdiction over regardless of whether or not
15 there's a merger, that you could ask us to deal with
16 your concerns?

17 MR. CRABTREE: Well, yes and no. I mean,
18 this is an interesting strategic tactic that the
19 applicants -- the fine wedge, so to speak. They're

20 saying on the one hand, any item in which the
21 Commission has continuing jurisdiction should be
22 dealt with after the fact and not really included in
23 this merger. On the other hand, any item where the
24 Commission lacks that jurisdiction, somehow falls
25 outside of the scope of this merger case. And like I

1 said, it's a nice, fine wedge that opens up little to
2 be considered in this merger.

3 But specifically to your point, I think that
4 it is not within the public interest if the merger
5 creates an environment where a number of issues like
6 those have to be taken up after the fact. In fact,
7 had the merger never occurred, those issues would not
8 be there.

9 COMMISSIONER WHITE: You do intend to point
10 out with particularity what you anticipate may happen
11 purely as a result of the merger that may harm your
12 interests?

13 MR. CRABTREE: Yes. Point out? I think
14 that, again, picking up on what Mr. Dodge says, I
15 believe that the ultimate burden of persuasion, of
16 proving the public good, the public interest, stands
17 with and will always remain with the applicant on
18 those issues. We fairly identify them and raise
19 them. It is up to the applicants to disprove that.

20 Or if we raise them in the context that you
21 cannot tell from the filings that the applicants have
22 made what will be that impact, or how that impact may
23 not be disparate or improper in the rural areas, I
24 think that satisfies fairly our requirement to put
25 them on notice.

1 And if, in fact, the Commission determines
2 that, yes, that's right, we cannot tell from the
3 filing what those impacts or what those effects will
4 be, that raises the grounds for denying or
5 conditioning the merger.

6 COMMISSIONER WHITE: If they say, in
7 effect, everything will be fine, does that shift the
8 burden to you to show us where there are real
9 problems?

10 MR. CRABTREE: No. I believe their burden
11 is to not only say everything will be fine but to
12 demonstrate it.

13 COMMISSIONER WHITE: If you think there's a
14 real harm to your clients, wouldn't it be your burden
15 to point out to us where you think the problems are
16 and what remedies you would propose?

17 MR. CRABTREE: It would be our burden to
18 demonstrate -- to describe the issue, yes. Beyond
19 that, I believe that the burden of ultimate proof,

20 the preponderance of the evidence lies with the

21 applicants.

22 CHAIRMAN MECHAM: So on the testimony you

23 would file in this case, there may be issues that the

24 applicants did not address. You, in turn, in your

25 initial testimony would say, my client has the

1 following problems that weren't addressed by the
2 applicant. Okay?

3 So then it shifts to the applicant to say,
4 well, we don't think that's a problem for the
5 following reasons. And itemize those reasons. And I
6 guess to the degree it satisfies you and satisfies
7 us, they've met their burden.

8 This is the point I was trying to make
9 earlier and perhaps the point Mr. Burnett is saying.
10 In a normal case, they bring forward the issues they
11 think are issues germane to this case. If there are
12 other issues out there, it seems to me others have to
13 bring them forward, and then they're addressed.
14 Forget about burdens.

15 MR. CRABTREE: In a practical sense, that's
16 what I intended to say, I think. I tried to say it
17 before. Essentially, if I'm silent in my filing, I
18 remain silent at my risk, at the risk that an issue
19 important to me will be overlooked.

20 Therefore, in practical terms, I don't need
21 very much more guidance. I will, for practical
22 purposes, raise that issue.

23 CHAIRMAN MECHAM: Right. And I don't mean
24 to diminish the importance of burden and so on. But
25 I think we're getting tied up in things that may

1 ultimately not have an effect. Mr. Peters, let's go
2 to you.

3 MR. PETERS: Thank you. Mr. Burnett
4 indicated that they're being asked by the various
5 intervenors to prove a negative.

6 I would submit that demonstrating that the
7 price determined as between PacifiCorp and Scottish
8 Power is one that this Commission, through approvance
9 review, would determine is in the public interest, is
10 something they can affirmatively demonstrate, rather
11 than us trying to prove that they, in fact,
12 negotiated a transaction that was not in the public
13 interest.

14 Mr. Burnett, and I quote, said there are a
15 lot of different components that went into the price.
16 We don't know. We don't think you know. We think
17 you need to know. And if there were different
18 components, I think they should disclose them. Bring
19 them to the light of day.

20 He mischaracterizes our information with
21 regard to this proceeding. He contends that we're
22 here asking this Commission to determine what the
23 value is for purposes of taxation, and that that
24 belongs to the Commission.

25 We don't have any question about that.

1 Article 13 Section 11 of the Utah Constitution gives
2 the responsibility for determining the value of
3 utility and property to the Tax Commission.

4 What we want this Commission to be presented
5 with is sufficient evidence to show that this
6 negotiated price as between PacifiCorp and Scottish
7 Power does reflect the public interest. And you
8 might ask, well, how does that occur? Or how is the
9 public interest affected?

10 First of all, we've got ratepayers, we've got
11 shareholders, we've got bondholders, and we've got
12 counties and the various municipalities and school
13 districts that rely on the values of these utilities
14 for property tax purposes.

15 Now, the shareholders -- if, in fact, the
16 components that Mr. Burnett refers to reflect that
17 PacifiCorp was sold at a price undervaluing the
18 physical assets of PacifiCorp, then perhaps we are
19 transferring an interest of the ratepayers, who have,

20 in fact, through their rates helped purchase those

21 assets.

22 With regard to bondholders, Emery County has

23 issued \$121 million worth of pollution control bonds

24 for and in behalf of PacifiCorp. They have limited

25 bonding capacity. Those limits are dependent upon

1 their tax base.

2 If, in fact, PacifiCorp dumped this --
3 PacifiCorp management dumped this property in order
4 to get someone in there with better financial
5 position, or in fact because of the fact of their
6 failed attempts to acquire a company in the United
7 Kingdom, or other failed attempts, we need to know
8 that. You need to know that.

9 Certainly, the impact of this transaction
10 will have a corresponding impact on valuation
11 proceedings before the Tax Commission. I would
12 submit this is the only body that will be in a
13 position, and I believe in the public interest, that
14 has the opportunity to determine whether or not the
15 sale transaction negotiated is in the public
16 interest.

17 In passing, I might indicate that, for
18 example, the Tax Commission will look at what rate
19 base is over here with regard to this property, or

20 this company; and when it makes a valuation
21 determination, it looks at sales price, it looks at
22 income, it looks at cost. But when it looks at cost,
23 it gives us 70 to an 80 percent weight to the cost
24 figure, the rate base.

25 So it is important in terms of what will

1 happen in the Tax Commission. But it is more
2 important at this juncture, before this body, as it
3 relates to the public interest. And those interests
4 are as I've outlined, and there are probably more.
5 Thank you.

6 CHAIRMAN MECHAM: Thank you. I'm going to
7 go around the room.

8 MR. MATTHEIS: I'll try not to beat a dead
9 horse. I think a variety of people have said things
10 that we would agree with.

11 Our concern at this stage is that we not get
12 out a knife that's too sharp and cut things out that
13 don't need to be cut. I think the Commission will
14 have ample opportunity, when presented with a motion
15 to dismiss, to consider the efficiency of the basic
16 case or upon submission of testimony, assuming Mr.
17 Burnett and Mr. Hunter will be more than willing to
18 file motions to strike that place these issues
19 directly in front of you.

20 Specifically, I listened to the discussions
21 about things like industry restructuring. Having
22 been involved in that process and seeing the hundreds
23 of issues that are considered by legislators,
24 attempting to carve out niches, unless we want to get
25 a list of a hundred issues and go through them, I

1 would urge the Commission not to attempt to parse out
2 something at this stage. There will be opportunity
3 later.

4 Special contracts, our concern goes to the
5 Commissioners' overall concern about this process.
6 Part of it seems like a tutorial in how this case
7 will progress, and maybe what they're saying is we've
8 made all the showing we intend to make with regard to
9 special contracts. If you want to say something
10 more, go ahead.

11 That's certainly their prerogative, and
12 that's what we would intend to do.

13 If they were intending to single out special
14 interest customers for disparate treatment, if
15 they're saying we made our showing as to special,
16 residential, commercial, industrial contracts, and
17 you have a burden of persuasion to come forward,
18 that's fine. That's why I wasn't sure of the
19 context, the shifting burden of proof, what they were

20 getting at.

21 COMMISSIONER WHITE: By definition, special

22 contract customers are already singled out to some

23 extent for different treatment.

24 MR. MATTHEIS: Absolutely. But what I'm

25 suggesting in the context of look at the public

1 interest, they'd look at the public interest as it
2 applies to all customers. Including special contract
3 customers.

4 COMMISSIONER WHITE: You'll help us
5 understand how special --

6 MR. MATTHEIS: Absolutely. What they're
7 saying is we've said all we intend to say, and now
8 the burden of persuasion, if you will, has shifted to
9 you. That's fine. We intend to come forward with
10 testimony, if we develop some, to tell the Commission
11 what we think.

12 COMMISSIONER WHITE: It's your position
13 that all of your concerns may not be dealt with in
14 the separate task force proceeding that we've set up?

15 MR. MATTHEIS: That's correct. I don't
16 believe the task force will address the merger
17 impacts. The task force, I think, is differently
18 focused.

19 CHAIRMAN MECHAM: All right.

20 MR. MATTHEIS: That's all I want to say.

21 I'll try not to belabor your time. Thank you.

22 CHAIRMAN MECHAM: Thank you. Anything

23 further, Mr. Dodge or Reeder?

24 MR. REEDER: We'll defer for the moment.

25 CHAIRMAN MECHAM: Mr. Allred?

1 MR. ALLRED: Thank you. First of all, I
2 would like to point out my concurrence with Mr.
3 Dodge's and Reeder's analysis with your jurisdiction
4 on this merger analysis as opposed to more specific
5 rate related issues.

6 I think it's important for the Commission to
7 realize your authority to compel and your authority
8 to facilitate in order to reach an end result. I
9 think many of us are not as concerned about
10 jurisdictional issues as we are about the ability to
11 achieve a net benefit conclusion at the end of these
12 proceedings.

13 I'm a little surprised to hear Mr. Hunter
14 comment numerous times about the 200 plus contracts
15 that will govern these matters. I point out to the
16 Commission that those contracts are not with Scottish
17 Power. And when this merger takes place, it's a
18 whole new ball game as far as cities and Scottish
19 Power.

20 I remind Mr. Hunter that during the last
21 merger, contracts of franchises were redone in the
22 name of PacifiCorp. And it is certainly my view that
23 the numerous franchises that I'm aware of do not
24 provide for a transfer without municipal approval
25 from the current contract to a successor.

1 A comment was made by Mr. Hunter regarding
2 the CP National and the ability of this Commission to
3 grant options.

4 I'm surprised to hear his analysis. Because
5 I think if you go back and look at that case and the
6 proceedings behind that case, it was concluded there
7 was sound public policy reasons for granting those
8 options. And that is that there should not be -- the
9 Commission should not act to encourage parallel
10 systems.

11 Mr. Hunter suggests this Commission ought to
12 reserve its attention for core jurisdictional issues
13 of price and reliability. And I suggest, to adopt
14 their severance of municipal issues would not be
15 consistent with that jurisdiction.

16 Let me submit that three cities -- Salt Lake
17 City, West Valley, and Sandy -- make up I think
18 probably 50 percent or so of the entire customer base
19 of PacifiCorp's current Utah system.

20 If those three cities were somehow to
21 determine that they were going to municipalize, I
22 find it difficult to believe that Mr. Hunter would
23 suggest that that wouldn't have a profound effect on
24 the system -- on the price and reliability statewide.
25 And to ignore the option that cities may do that I

1 think suggests that you're really not looking at the
2 merger in whole.

3 Mr. Hunter commented that the Commission
4 should not be concerned about, quote, the threat that
5 the UP&L system could disappear.

6 MR. HUNTER: That's a misquote.

7 MR. ALLRED: That simply is nonsense.

8 MR. HUNTER: I agree, that is nonsense.

9 MR. ALLRED: I wrote it down as you said
10 it, Mr. Hunter, thank you. What we're looking for is
11 a net benefit to this state. You cannot suggest
12 there is a net benefit to this state without taking
13 into account all other alternatives.

14 We have come forward with the umbrella issue
15 of municipalization. We don't know at this point in
16 time whether we want options. We don't know, because
17 we haven't completed discovery. And as everyone else
18 has said, it's just too early to start cutting out
19 these issues until we've had that time.

20 There are a number of other things that may
21 provide for us the security that suggests there's a
22 benefit to my clients in this merger that wouldn't
23 require the option. But I will tell you, based on
24 our discussions with Scottish Power, that they see
25 the option of municipalization issue as potentially a

1 death knell to this merger. If something is a death
2 knell to this merger, I can't conceive how it can't
3 be relevant to the consideration before this
4 Commission.

5 We have been told again and again by Scottish
6 Power that they are in the business of acquiring the
7 assets of PacifiCorp, and they are not here to sell
8 off their assets. And yet when we ask them, are you
9 willing to give us a right of first refusal to
10 protect against that in the event that you do? They
11 say no.

12 Those are the issues we need to determine.
13 If they're going to convince us in the outset they
14 are good for us, we want the guarantees that after
15 the merger, they will continue to be good for us.
16 Thank you.

17 COMMISSIONER WHITE: Mr. Allred, if you
18 don't mind taking a few minutes to educate me, I
19 confess I know very little about municipalization and

20 some of your issues.

21 As I understand it, cities and towns assert
22 jurisdiction in a couple of ways. One is that you
23 will grant a franchise to a utility to operate within
24 your city or town?

25 MR. ALLRED: Correct.

1 COMMISSIONER WHITE: Another one is
2 municipalization. And that would involve acquiring
3 the property of a utility? Building your own or
4 acquiring the property of an existing utility?

5 MR. ALLRED: Correct.

6 COMMISSIONER WHITE: That's provided for in
7 the state constitution?

8 MR. ALLRED: It's provided in a number of
9 ways. The state constitution provides that
10 municipalities may provide for public utility
11 services. And so that's why you have the number of
12 existing municipal power companies right now.

13 There is also provision in state statute that
14 provides for the transfer, the orderly transfer of
15 assets from a utility to a municipality.

16 COMMISSIONER WHITE: That's the
17 condemnation proceeding?

18 MR. ALLRED: There are those proceedings,
19 and also I think the Facility Relocation Act, a

20 relatively new act that provides for some of the
21 funding mechanisms on how that will take place.
22 I think it's important to realize, however,
23 that in almost every franchise that is currently
24 existing out there, there is broad authority in
25 municipal franchises that mandates that upon the

1 request of the municipality for a lawful purpose, the
2 public utility does need to relocate its facilities
3 out of the public right-of-way at the utility's cost.

4 So a lot of what was intended to be covered
5 by this relatively new relocation statute is really
6 governed by existing contract law between utilities
7 and municipalities.

8 COMMISSIONER WHITE: So I'm still
9 struggling to understand what it is that this
10 Commission can do in this proceeding to resolve your
11 concerns. Because it seems to me, your concerns
12 revolve around whether you're going to grant a
13 utility a franchise or whether you're going to
14 acquire its property or whether you're going to make
15 it move.

16 And the Commission doesn't get involved in
17 those decisions, do we?

18 MR. ALLRED: You don't normally. And we're
19 suggesting that in this context, it may well be in

20 everyone's interests for us to submit, for limited

21 purposes, to this Commission.

22 We are concerned that if a merger takes place

23 based on an analysis of what the system-wide benefit

24 to the state is, then you find out that 200

25 municipalities are saying we don't like what they

1 did, you all of a sudden have a very different beast
2 feeding at your table.

3 COMMISSIONER WHITE: It seems to me about
4 any way you wanted to, you could put them out of
5 business by just every city in town decided to buy
6 what's within their city limits and driving the
7 utility out of the state.

8 MR. ALLRED: I believe we could. My
9 question is, is that's what's in the public good? Is
10 that format, that process, in the public good?

11 COMMISSIONER WHITE: But you could do that
12 with or without a merger proceeding. I mean, that's
13 always an issue. So I'm not quite understanding what
14 it is -- what your concerns are and how we can
15 resolve them in this proceeding, given the enormous
16 power that you have.

17 MR. ALLRED: I think the concerns the
18 Commission ought to have is what will be the result
19 of the merger, given certain conditions? If those

20 conditions are not to the liking of other autonomous
21 governments, you may have approved something that
22 isn't going to work like you thought it was going to
23 work. It may not have the benefits that you thought
24 it was going to provide.

25 What we're suggesting is that there ought to

1 be the opportunity for us to have discovery, have
2 some dialogue with the applicants and try and achieve
3 a modicum of understanding how this merger will
4 affect municipalities, what they can do to --
5 probably they would agree to lessen the likelihood of
6 municipalization, and yet still provide to
7 municipalities some of the benefits that would have
8 been achieved if they had gone through the
9 municipalization process.

10 COMMISSIONER WHITE: But what benefits do
11 they owe your constituents once you have
12 municipalized?

13 MR. ALLRED: No. Municipalization to me is
14 the concept that we actually take ownership. I'm
15 suggesting that there may be some benefits -- short
16 of dissecting PacifiCorp's system, there may be some
17 benefits that can be provided to municipalities in
18 order to retain the Utah system intact.

19 COMMISSIONER WHITE: I would imagine that

20 that comes up, that issue comes up every time you --
21 I mean, you'd just have to approach PacifiCorp and
22 say, we're thinking of municipalizing. I would
23 imagine that could kick off discussions about what
24 they could do for you short of you taking over their
25 system. It seems to me you always have that

1 leverage, with or without our help.

2 MR. ALLRED: I suggest we have a lot of
3 leverage. But I suggest it would not be in the
4 formalized process that we could do it and achieve it
5 here. And that the Commission would know -- at the
6 time they have to decide whether the best interest
7 has been met, they would know what cities are going
8 to do rather than take a shot in the dark that we're
9 doing what we think based on what we now know. But
10 that could all change next month.

11 CHAIRMAN MECHAM: What's an example of
12 something that could be preserved, short of
13 municipalization, that would be an advantage to the
14 cities?

15 MR. ALLRED: The most obvious that comes to
16 mind, based on the last merger, is loss of local
17 control. We are very concerned that we have moved
18 from a Utah company, where we had access and dialogue
19 with those people, to an Oregon company, and now to a

20 transAtlantic company.

21 We think it is very important that

22 communities have people that they can talk to when

23 it's time for economic development, when it's time

24 for planning and zoning, that there are people who

25 are invested in the community.

1 Other issues are, if we were to municipalize,
2 there is likelihood that rates could increase. We
3 don't have the same profit incentive.

4 Now, I recognize we're not going to get the
5 same deal from PacifiCorp or the merged company that
6 we may if we were to municipalize. But there may be
7 some incentives there.

8 We think there's also some opportunities to
9 acquire -- if we owned the property, we would have
10 certain benefits of knowing how we could develop our
11 municipalities around those assets. We'd have some
12 ability to exchange those. We think that is
13 something that we ought to be talking about.

14 We are very concerned about infrastructure
15 being a barrier to orderly development inside
16 municipalities.

17 CHAIRMAN MECHAM: Price differential isn't
18 quite what it used to be.

19 MR. ALLRED: It is not.

20 CHAIRMAN MECHAM: Mr. McNulty, anything

21 further?

22 MR. MCNULTY: Commissioner, you indicated

23 something just a few moments ago. You said that it

24 would appear that the applicants -- not the

25 applicants; the intervenors have the ability to raise

1 issues, the applicants then respond to those issues,
2 and then if the intervenors are satisfied with the
3 response, then we've moved along.

4 I would suggest that that's exactly what
5 happens with my annexation issue or my client's
6 annexation issue. An issue was raised, they've
7 responded, we're satisfied with the response;
8 therefore, we've agreed to withdraw that off the
9 table.

10 I would indicate that I believe Mr. Dodge
11 seems to have it pretty well in hand when he suggests
12 that you can consider issues outside of your
13 jurisdiction in order to determine what is in the
14 public interest. And I think he has it also right on
15 top, right in hand, when he says that you can impose
16 conditions, and you can suggest conditions.

17 And for purposes of this, the proceeding
18 today, we plan on submitting testimony about our
19 other issues. We'll raise those issues. We hope

20 they respond to them. And we trust that our
21 questions will be satisfied. I think that's the
22 orderly process.

23 CHAIRMAN MECHAM: Thank you. Mr. Ginsberg,
24 anything further?

25 MR. GINSBERG: I think the only thing in

1 addition, the issues raised by Deseret with respect
2 to service quality, reliability, are -- maybe this is
3 where that focus tends to be blurred -- are on the
4 table. But as I understood Deseret's issue, it was
5 to have some territory -- the ability to have that
6 territory transferred.

7 So it seems that some issues are more
8 directly related while some -- maybe that's similar
9 to the example on restructuring.

10 The other example I wanted to raise was with
11 respect to the premium that's been raised and all of
12 those issues, it seems that the company does have the
13 obligation to disclose any negative effects that
14 result from the premium which could be the
15 possibility that there would be a direct increase in
16 property taxes as a result of that.

17 If that's a possibility that could happen,
18 then it seems that that has to be dealt with directly
19 by the Commission in this proceeding.

20 CHAIRMAN MECHAM: Okay. Mr. Tingey?

21 MR. TINGEY: As a general matter, no one

22 has raised any problem with our issues, so we'll be

23 brief.

24 We agree with Mr. Ginsberg, that the one

25 issue we have brought up discussed today is the

1 property tax. We agree with what Mr. Ginsberg has
2 just said, that the effect of that, a risk of an
3 effect of that is in the mix of that net positive
4 benefits that needs to be dealt with by the company
5 and the Commission. That ought to be dealt with as
6 one of the core issues.

7 And other than that, as far as the general
8 issues, the restructuring issues and those sorts of
9 things, we're in general agreement with the way Mr.
10 Burnett has laid it out about the distinction between
11 corporate restructuring, which are definitely issues
12 and everybody's dealing with them and no one
13 questions, and the industry restructuring, which are
14 not -- this is not the time and the place to deal
15 with those.

16 CHAIRMAN MECHAM: Mr. Farr?

17 MR. FARR: Commissioner, you asked earlier
18 whether in the parties raising issues, whether they
19 intended to accept the burden of those issues or

20 whether Scottish Power should have the burden.

21 It was our intent that there was really no
22 intent to shift any burden by raising an issue, but
23 to let them fall where they may.

24 For example, in determining whether the
25 transactions in the public's interest, it would seem

1 that some showing of the effect on the economy would
2 come within that. That there ought to be something
3 more than just that it's reliable and good rates, but
4 that there ought to be some showing that it would be
5 in the public interest from an economic standpoint.

6 CHAIRMAN MECHAM: Of course, if the rates
7 are good and the reliability is good, it has to have
8 a positive impact on the economy, doesn't it?

9 MR. FARR: I think so. But if it
10 negatively impacts jobs, if it impacts facility
11 structures and things like that, there may be other
12 considerations.

13 I think most of it is taken up -- the impact
14 on the economy is shown by those other issues. But I
15 think there ought to be some showing in that regard.

16 CHAIRMAN MECHAM: All right. Mr. Burnett,
17 you wanted to say something?

18 MR. BURNETT: Thank you. I just have a
19 couple of comments. I don't want to lose focus on

20 this generally. Sometimes you get mired in the
21 details or arguing about burden, those kind of
22 things.

23 I think what we asked is simple. There are a
24 couple of issues that we really think shouldn't be
25 involved in this proceeding. All of the other

1 issues, people can bring forward. And I think they
2 have an obligation to bring those forward.

3 We're buying the stock of PacifiCorp. Many
4 of these things would exist -- our environmental
5 permits would still be here if we weren't here,
6 regional haze would still be an issue if we weren't
7 here. The special contracts task force would still
8 be here.

9 We've given our position on a lot of these
10 issues, and I think we've put forth a prima facie
11 case showing positive net benefits. But I think it's
12 incumbent on others now to bring forth concerns they
13 have -- issues we think probably shouldn't be dealt
14 with -- to show us what their concerns are.

15 And rate base stays the same. We're just
16 buying the stock of this company; we're not changing
17 the rate base. The Commission doesn't -- I mean,
18 we're not going to -- so there are a lot of issues
19 here that don't change.

20 And I think the focus should be parties have
21 an obligation to come forward, show us why they have
22 concerns, and we'll respond to it. That's the
23 orderly process. And I think they have the burden to
24 do that. We don't have the burden to try to guess
25 what DCED may be concerned about.

1 We put forth a prima facie case saying we're
2 going to improve service quality, \$10 million in
3 corporate cost savings annually -- when you present
4 that, that's \$100 million -- I think that's a net
5 benefit. You know? Other people, come forward and
6 show me your problems, and then I'll respond to them.

7 MR. HUNTER: Briefly --

8 CHAIRMAN MECHAM: It sounds so simple, Mr.
9 Burnett.

10 MR. HUNTER: That's the point. It is a
11 practical problem. It's a real problem. Burden is
12 usually not before the Commission, as we all know.

13 In this case, Mr. Crabtree accurately
14 explained at least what PacifiCorp's concern is. He
15 said something about we've raised an issue, and if
16 they are silent on it, they've taken the risk. And
17 that's also in the context of we don't know what
18 competition is, and we don't know what restructuring
19 is. That's our problem.

20 What we would like from the Commission, if we
21 could get it, is some direction as to we filed our
22 prima facie case; if people have a problem, they file
23 their testimony addressing those issues, and
24 PacifiCorp has a responsibility to address those.
25 Somehow reaching the conclusion people have

1 filed all these issue statements, and to the extent
2 there's an issue on the statement, somehow we have
3 the burden to address it? That's what we're
4 concerned about.

5 The other thing, I don't want to fight with
6 the municipalities any more than necessary. But Mr.
7 Allred pointed out, said that you have the -- it's
8 incumbent upon you to look and see what the
9 alternatives are. In the context of what he's
10 talking about, obviously we disagree with him about
11 the legal ability to abrogate those contracts.

12 If the Commission wanted actually to look at
13 what alternatives were available, they would have to
14 go through each of the 200 contracts and determine
15 whether or not somebody had the right, whether there
16 was magic language in it, what the magic language
17 meant.

18 From our perspective, to the extent we can't
19 resolve those through the dialogue still going on,

20 those will be resolved in court. Not before this

21 Commission.

22 The final point is that Emery County and Mr.

23 Ginsberg identified what the problem is with a broad

24 public interest standard. I assume Emery County

25 would not see it in the public interest if property

1 taxes went down as a result of this transaction.

2 That's a negative.

3 Mr. Ginsberg and the economy, on the other
4 hand, would think that if property taxes go up as a
5 result of this transaction, that's not in the public
6 interest.

7 We submit that the Commission has to
8 determine what its jurisdiction is simply for the
9 purposes of determining what the public interest
10 means to it.

11 Having lots of employees in the state of Utah
12 may be in somebody's idea of a public interest.
13 Hiring more people. To the extent that negatively
14 impacts rates, customers might not think that was in
15 the public interest.

16 Thank you, that's all.

17 CHAIRMAN MECHAM: Mr. Reeder?

18 MR. REEDER: There is an effort to take
19 some issues off the table, nonetheless. Those issues

20 are the issues that relate to restructuring.

21 The correct outcome may well be just follow

22 Mr. Hunter's advice, and that is let's wait until we

23 hear the evidence and decide what the correct outcome

24 is on those issues after we hear everyone's evidence

25 presented in whatever fashion happens to be the most

1 efficient, and then make the decision about what
2 remedies to employ and how to employ them, rather
3 than taking them off the table now.

4 Hear the evidence before you take the
5 remedies off the table would be our request.

6 CHAIRMAN MECHAM: Let's take a brief
7 recess.

8 (Whereupon a recess was taken.)

9 CHAIRMAN MECHAM: Let's go back on the
10 record. We're going to take all the items and
11 matters you've raised this morning under advisement,
12 deliberate a little longer. And unless there's
13 something further we need to discuss, I think we'll
14 adjourn for the day. Thank you, we'll adjourn.

15 (Whereupon the proceedings were
16 adjourned at 11:05 a.m.)

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

3

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