BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPLICATION OF PACIFICORP AND SCOTTISH POWER plc FOR AN ORDER APPROVING THE ISSUANCE OF PACIFICORP COMMON STOCK.

DOCKET NO. 98-2035-04

UTAH DIVISION OF PUBLIC UTILITIES

EXHIBIT NO. DPU 5.0R

REBUTTAL TESTIMONY OF KENNETH B. POWELL

FOR THE

DIVISION OF PUBLIC UTILITIES

DEPARTMENT OF COMMERCE

STATE OF UTAH

July 16, 1999

1	Q. PLEASE STATE YOUR NAME.				
2	A. Kenneth B. Powell				
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4	Q. HAVE YOU TESTIFIED PREVIOUSLY IN THIS CASE?				
5	A. Yes, I have.				
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7	Q. WHAT IS THE PURPOSE OF THIS REBUTTAL TESTIMONY?				
8	A. I am responding to the Direct Testimony of Maurice Brubaker, testifying in behalf of Utah				
9	Industrial Energy Consumers [UIEC], Exhibit No. UIEC-1.0.				
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11	Q. TO WHAT PART OF HIS TESTIMONY ARE YOU RESPONDING?				
12	A. I am responding to the recommendation that he makes on page 50 of his testimony that				
13	"PacifiCorp be required to renew any existing special contracts that expire during the				
14	five-year rate cap period, at the option of the customer, on terms no less favorable to the				
15	customer than the terms of the current special contracts."				
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17	Q. DOES THE DPU OBJECT TO THAT RECOMMENDATION?				
18	A. We do. We believe Mr. Brubaker's recommendation should be rejected for five reasons:				
19	1. The Utah Public Service Commission [PSC] has previously ordered, in individual				
20	cases for each of the Special Incentive Contracts, that Special Incentive Contracts				
21	not be automatically renewed, but that PC should have to make a new filing				
22	justifying the contracts, for DPU review and PSC consideration. Adopting Mr.				
23	Brubaker's recommendation invalidates all those previous orders, which were				
24	ordered after intensive investigation, in favor of a policy that has no cost basis.				
25	2. The PSC has previously ordered the creation of a Task Force to establish the				
26	criteria for approval of Special Incentive Contracts, among other things. An				
27	automatic renewal of those contracts now would make moot the work of that Tasl				
28	Force. The Task Force recommendations are due in mid-December and this case				
29	may well be decided by then.				

1	3.	The earliest of these Special Incentive contracts come up for renewal beginning in
2		about two years with other renewals continuing for several years. It is impossible
3		to know at this time whether those contracts will meet any present or future
4		criteria. It is possible that at least some of those contracts will not be economically
5		justifiable at that time, or they may fail to meet other criteria. Adopting Mr.
6		Brubaker's recommendation at this time might well result in contracts which
7		don't meet present or subsequent cost coverage criteria.
8	4.	As mentioned, the first of these Special Incentive contracts comes up for renewal
9		beginning in about two years with others due in subsequent years. These contracts
10		typically have a term of five years. Automatically renewing the contracts for a
11		like term would extend the benefits of a rate cap to these Special Contract
12		customers far beyond the time when the cap expires for other customers.
13	5.	Mr. Brubaker has failed to adequately explain in his testimony any reason why
14		approval of this merger should be conditioned on automatic extension of the
15		Special Incentive Contracts. Those contracts are currently approved and in place
16		and will not be impacted by the merger.
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18	Q. WITH RE	GARD TO YOUR LAST RESPONSE, WHAT JUSTIFICATION DOES MR.
19	BRUE	BAKER OFFER FOR THE AUTOMATIC EXTENSION OF THE SPECIAL
20	INCE	NTIVE CONTRACTS?
21	A. He had pro	eviously recommended a price cap for retail customers. He apparently believes that
22	autom	atic extension of the Special Incentive Contracts at present rates is necessary to
23	effect	a price cap for the Special Incentive Contract customers he represents and keep
24	them a	at a consistent relationship with other customers.
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26	Q. DO YOU	AGREE?
27	A. The DPU	doesn't agree with his premise, nor with his application of the premise.

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A. The DPU doesn't agree with his premise, nor with his application of the premise.

29 Q. PLEASE EXPLAIN WHAT YOU MEAN.

A. The implied premise is that the Special Incentive Contracts have a consistent relationship with retail prices as represented by the retail tariffs. No such relationship to retail prices has ever been a criteria for approval of these contracts. Such a relationship has not been maintained in the past. Nor has such a relationship has been recommended to the Task Force on Special Incentive Contracts at this time. Nor would the DPU approve such a criteria if it were put forth.

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O. WHY WOULDN'T YOU APPROVAL SUCH A RELATIONSHIP?

A. At present Special Incentive Contract prices are established with a specific relationship to costs. They are expected to cover all incremental costs and make the maximum possible contribution to fixed costs, considering the price of alternative sources of electricity either in Utah or other potential locations. Trying to hold, instead, a relationship to retail tariffs might well invalidate the desired relationship to costs and make the contracts harmful to other rate payers.

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Q. IN POINT 4, YOU DISCUSSED THE PROBLEM WITH RENEWING THESE CONTRACTS FOR A LIKE PERIOD. DOES MR. BRUBAKER SPECIFICALLY RECOMMEND RENEWING THE CONTRACTS FOR A LIKE PERIOD?

19 A. He does not explicitly recommend that. However, requiring that the contracts will be 20 renewed "on terms no less favorable to the customer" than the current contract certainly 21 opens the door implicitly. The length of a contract is a "term" of the contract and a 22 customer might well decide that a renewed contract would be less favorable if it wasn't in 23

effect for the same time period as the original contract.

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- Q. IF MR. BRUBAKER OR HIS CLIENT WERE TO AGREE THAT RENEWALS OF SPECIAL CONTRACTS WOULD BE ONLY FOR THE TERM OF THE PRICE CAP. IF ANY, WOULD THAT RELIEVE YOUR CONCERN ON THIS POINT?
- A. On this one point, yes, such an agreement to limit the term of renewal would resolve our concern. We would still object to contract extension for the other four listed reasons.

1	Q. MR. BRUBAKER ON PAGE 50 SUGGESTS THAT IF THE CONTRACTS ARE NOT
2	AUTOMATICALLY RENEWED, THEN THE SPECIAL CONTRACT CUSTOMERS
3	SHOULD BE GIVEN THE OPPORTUNITY TO OBTAIN THEIR POWER
4	ELSEWHERE. DOES THE DPU AGREE?
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6	A. Yes and no. We agree with the concept, but not with Mr. Brubaker's application of it.
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8	Q. PLEASE EXPLAIN.
9	A. The "yes" part of my previous answer is based on the existing situation. Existing special
10	contract customers in Utah had to meet a "but for" test before obtaining their contracts.
11	By this I mean that PC had to show that if the customer wasn't allowed the lower special
12	contract rate, the customer would either obtain its power needs elsewhere or eliminate
13	those needs in some other way. So to that degree, the existing Special Contracts
14	customers already have the opportunity to release themselves from the commitment to
15	purchase from PC at the expiration of their contracts.
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17	Q. IS THIS WHAT MR. BRUBAKER IS REFERRING TO?
18	A. No, apparently Mr. Brubaker wants something more, that which has in recent years come to
19	be called "retail access." He states, "PacifiCorp should be required to release these
20	customers from any commitment to purchase electricity competitively on the open market
21	and to deliver the power to their locations on the PacifiCorp system using FERC-
22	approved OATTS. PacifiCorp/Scottish Power should not be allowed to refuse renewal of
23	contracts unless customers have a viable transmission option in the form of an RTO or an
24	ISO so that the pancaking problem is avoided."
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26	Q. DOES THE DPU OBJECT TO THE PSC GRANTING RETAIL ACCESS TO SELECTED
27	CUSTOMERS IN THIS CASE?
28	A. Yes, we do. That is the "no" part of my earlier answer.
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O. WHY DO YOU OBJECT	Ο.	. WHY	' DO	YOU	OBJECT	Γ?
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- A. The issues of who should be provided with retail access and when it should be provided are parts of the far broader issue of utility deregulation. Agreeing to grant retail access to a select few customers without a thorough investigation of all the issues relating to deregulation is not just and reasonable. At the same time, hearing all of the potential deregulation issues in the context of this merger case is not necessary to deciding merger-related issues and unnecessarily complicates and broadens this case. Moreover, the Utah Legislature has decided that they will be the decision making body with regard to restructuring. Attempting to resolve portions of the restructuring issues with the PSC could be seen as an attempt to bypass the legislature.
- Q. WHAT DOES THE DPU BELIEVE SHOULD BE DONE TO HELP THE SPECIAL CONTRACTS CUSTOMERS SHARE IN THE BENEFITS OF A RATE CAP, IF ONE IS ADOPTED BY THE PSC?
 - A. We believe that nothing more needs to be done. The prices paid by the Special Contracts customers are already substantially below tariff prices. And those prices are, in effect, capped for the term of the contract. We would strongly object to any automatic renewals of these contracts at current prices and terms, without comprehensive review of the cost justification and other issues. We would also object to the granting of retail access to these Special Contract customers as a part of the merger case.

SUMMARY OF REBUTTAL TESTIMONY

2 Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY FOR US.

- 3 A. We believe Mr. Brubaker's recommendation that present Special Contracts be renewed at no
- 4 less favorable terms, as a condition of merger approval, should be rejected for five reasons:
- The PSC has previously ordered that Special Incentive Contracts not be automatically renewed, but that PC should make a new filing justifying the contracts, for DPU review and PSC approval. Adopting Mr. Brubaker's recommendation invalidates those previous orders in favor of a policy that has no cost basis.
- The PSC has previously ordered the creation of a Task Force to establish the criteria for
 approval of Special Incentive Contracts. An automatic renewal of those contracts now
 would make moot the work of that Task Force.
- The earliest contracts come up for renewal in about two years with other renewals
 continuing for several years. It is impossible to know at this time whether those contracts
 will meet any present or future criteria, especially cost coverage criteria.
 - 4. As mentioned, the first of these contracts comes up for renewal beginning in about two years with others due in subsequent years. These contracts typically have a term of five years. Automatically renewing the contracts for a like term would extend the benefits of any rate cap to these Special Contract customers far beyond the time when the cap expires for other customers.
 - 5. Mr. Brubaker has failed to adequately explain in his testimony any reason why approval of this merger should be conditioned on automatic extension of the Special Incentive Contracts. Those contracts are currently approved and in place and will not be impacted by the merger.

We also recommend that Mr. Brubaker's alternative recommendation of granting these customers retail access as a condition of the merger is not supportable without a full investigation of the issues involved in utility deregulation. We therefore recommend against the PSC allowing retail access for the Special Contract customers in this merger case. This concludes my rebuttal testimony.