

Edward A. Hunter
STOEL RIVES LLP
201 South Main St., Suite 1100
Salt Lake City, Utah 84111
Telephone: (801) 328-3131
Facsimile: (801) 578-6999
Attorneys for PacifiCorp

Brian W. Burnett
CALLISTER NEBEKER & MCCULLOUGH
Gateway Tower East, Suite 900
Salt Lake City, Utah 84133
Telephone: (801) 530-7300
Facsimile: (801) 364-9127
Attorneys for Scottish Power plc

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

**APPLICANTS' MOTION TO
STRIKE PORTIONS OF THE
PREFILED DIRECT
TESTIMONY OF DENNIS W.
GOINS**

PacifiCorp and Scottish Power plc (“Applicants”), by and through their attorneys of record, hereby move the Public Service Commission of Utah (“Commission”) to strike the following portions of the prefiled direct testimony of Dennis W. Goins dated June 18, 1999 filed on behalf of the Nucor Steel (“Nucor”) in the above-referenced docket: page 5, line 13 beginning with the word “then” through line 20; page 15, lines 19 through 24; page 17, line 16 through page 18, line 26.

BACKGROUND

The portions of Mr. Goins' testimony noted above address two issues which should not be considered by the Commission in this docket. The first issue is Mr. Goins' recommendation that the Commission condition the merger upon ScottishPower allowing retail access in Utah if certain conditions do not occur.

The second issue is Mr. Goins' recommendation that ScottishPower forego any generation and transmission related stranded cost recovery on existing domestic plant and equipment.

STANDARD

The Commission issued an Interim Order in this proceeding, dated May 10, 1999, requiring that the parties demonstrate why issues presented in their testimony should be considered in this docket.

ARGUMENT

1. **Relevancy.** Mr. Goins has failed to meet the burden the Commission has established in its Order relating to the retail access and stranded cost issues. The establishment of retail access and the review of stranded cost issues are matters which are irrelevant to this proceeding and should not be considered by the Commission in this docket. The identified testimony should be stricken because Mr. Goins has attempted to interject into this proceeding issues which are reserved for other forums and other dockets. The focus of this proceeding should be on the

ScottishPower/PacifiCorp transaction and matters which are centrally related to the merger which is simply the transfer of the stock of PacifiCorp.

2. **Industry Restructuring.** Issues involving the creation of retail access and issues relating to stranded costs involve matters relating to deregulation which are being addressed by the Utah Legislature. The 1999 Utah Legislature passed SB 15 which amended certain sections of Title 54 of the Utah Code and provided for reauthorization of the legislature's Electric Deregulation and Customer Choice Task Force. This legislation instructs the Commission to work with the Task Force and study electrical restructuring issues. The Commission has already expended significant resources in a multi-year analysis regarding electric restructuring in Docket No. 96-999-01. The ScottishPower/PacifiCorp proceeding is clearly not where the issue of electric restructuring should occur. ScottishPower is purchasing the stock of PacifiCorp and the focus of the Commission proceeding should be on this transaction.

The establishment of retail access or a discussion of stranded costs should not be reviewed in this docket.

3. **Commission Authority to Exclude Evidence.** The Commission has the authority to exclude issues which are irrelevant to this proceeding. The Administrative Procedures Act ("APA"), Utah Code Ann. § 63-46b-8(1)(b), provides as follows:

On his own motion or upon objection by a party, the presiding officer: (i) may exclude evidence that is irrelevant, immaterial, or unduly repetitious

The Commission has granted a Motion to Strike testimony that was irrelevant to the proceeding citing to the APA, Utah Code Ann. § 63-46b-8(1)(b)(i), See U.S. West Communication, Inc., 1994 WL 400918, PUR Slip Copy. In that docket, the Commission considered whether the

proposed sale of a telephone exchange was in the public interest. The Commission excluded testimony regarding the history of the exchange, the attempts to serve the area, circumstances of the sale of other telephone exchanges, and the cost estimates for construction of a new system in the telephone exchange. Also, in Mountain Fuel Supply v. PSC, 861 P.2d 414 (Utah, 1993), the Utah Supreme Court upheld the Commission's decision to exclude evidence regarding a future test year stating that:

Under the APA, the Commission has the discretion to exclude "irrelevant, immaterial, or unduly repetitious" evidence. Utah Code Ann. § 63-46b-8(1)(b)(i); see also Utah R. Evid. 403.

The Commission has the statutory authority to exclude irrelevant evidence, which it has exercised previously and the Utah Supreme Court has upheld the Commission's use of this authority. The establishment of retail access and the discussion of stranded costs are irrelevant to this proceeding. The Commission should therefore use its authority under Utah Code Ann. § 63-46b-8(1)(b)(i) to strike the testimony related to those issues.

NOW THEREFORE, the Applicants respectfully request that the Commission strike the portions of the testimony of Mr. Goins set forth above for the following reasons:

1. The establishment of retail access and stranded costs are irrelevant to the ScottishPower/PacifiCorp transaction and should not be considered in this proceeding.
2. The Utah Legislature through the Electric Deregulation and Customer Choice Task Force is handling issues relating to deregulation, competition and the related issues of the establishment of retail access and stranded

costs. The law requires the Commission to work with this Task Force.

The Utah Legislature is the appropriate forum to address these issues.

3. The Commission has the statutory authority to exclude irrelevant issues in this proceeding and should strike the portions of the testimony of Mr. Goins identified above.

DATED this ____ day of July, 1999.

STOEL RIVES LLP
CALLISTER NEBEKER & McCULLOUGH

Edward A. Hunter
Brian W. Burnett
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing ***APPLICANTS' MOTION TO STRIKE PORTIONS OF THE PREFILED DIRECT TESTIMONY OF DENNIS W. GOINS*** to be served upon the following persons via Federal Express or by mailing a true and correct copy of the same, postage prepaid, to the following on March 20, 2012:

Michael Ginsberg
Assistant Attorney General
Division of Public Utilities
160 East 300 South, 5th Floor
Salt Lake City, UT 84111

Lee R. Brown
Vice President
Magnesium Corporation of America
238 North 2200 West
Salt Lake City, UT 84116

Doug Tingey
Assistant Attorney General
Committee of Consumer Service
160 East 300 South, 5th Floor
Salt Lake City, UT 84111

Daniel Moquin
Assistant Attorney General
1594 West North Temple, Suite 300
Salt Lake City, UT 84116

Peter J. Mattheis (via FedEx)
Matthew J. Jones
Brickfield, Burchette & Ritts, P.C.
1025 Thomas Jefferson Street, N.W.
800 West Tower
Washington, D.C. 20007

Gary A. Dodge
Parr Waddoups Brown Gee & Loveless
185 South State Street, Suite 1300
Salt Lake City, UT 84111-1536

Bill Thomas Peters
David W. Scofield
Parsons, Davies, Kinghorn & Peters, P.C.
185 South State Street, Suite 700
Salt Lake City, UT 84111

Eric Blank
Law Fund Energy Project
2260 Baseline Road, Suite 200
Boulder, CO 80302

F. Robert. Reeder
William J. Evans
Parsons Behle & Latimer
201 South Main Street
P.O. Box 45898
Salt Lake City, UT 84145-0898

Matthew F. McNulty, III
Van Cott Bagley Cornwall & McCarthy
50 South Main Street, Suite 1600
P.O. Box 45340
Salt Lake City, UT 84145

Roger O. Tew
60 South 600 East, Suite 200
Salt Lake City, UT 84102

Steven W. Allred
Salt Lake City Law Department
451 South State Street, Suite 505
Salt Lake City, UT 84111

Paul T. Morris
3600 Constitution Boulevard
West Valley City, UT 84119

Stephen R. Randle
Randle Deamer Zarr Romrell & Lee P.C.
139 East South Temple, Suite 330
Salt Lake City, UT 84111-1169

Dr. Charles E. Johnson
The Three Parties
1338 Foothill Boulevard, Suite 134
Salt Lake City, UT 84108

David F. Crabtree
Deseret Generation & Transmission
Co-operative
5295 South 300 West, Suite 500
Murray, UT 84107

Brian L. Farr
Assistant Attorney General
160 East 300 South
P.O. Box 140857
Salt Lake City, UT 84114-0857
