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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of)	
PacifiCorp and Scottish Power plc)	Docket No. 98-2035-04
for an Order Approving the Issuance)	
of PacifiCorp Common Stock)	MEMORANDUM IN RESPONSE
)	TO APPLICANTS' MOTION TO
)	
)	STRIKE PORTIONS OF THE
)	PREFILED DIRECT TESTIMONY
)	OF CARL N. STOVER, JR.

Deseret Generation & Transmission Co-operative (“Deseret”) and its Member co-operatives (“Members”) (Deseret and Members are referred to collectively as the “Cooperatives”) submit this memorandum in response and opposition to the Applicants’ Motion to Strike Portions of the Prefiled Direct Testimony of Carl N. Stover, Jr. (“Applicants’ Motion”). The Applicants’ Motion, virtually identical in form and substance to three other motions filed by Applicants, asks this Commission to strike testimony relating to various remedies suggested by Mr. Stover in response to merger risks identified by him. For the reasons stated below, the Cooperatives urge the Commission to deny Applicants’ Motion.

ARGUMENT

The Applicants' Motion misstates the nature of Mr. Stover's testimony and the purposes for the proposed remedies he suggests. Applicants misconstrue and unduly limit this Commission's jurisdiction and ability to condition approval of the Merger to ensure such a merger would be in the public interest and not result in a detrimental impact to ratepayers under the Commission's jurisdiction. The best interests of those Utah ratepayers served by the Cooperatives are within the direct regulatory purview of this Commission. They are entitled to present to this Commission their concerns regarding the risks of this merger and their proposed solutions.

Mr. Stover provides extensive testimony explaining why the proposed merger places Deseret, its six member co-operatives, and their Utah members/consumers at risk for increased costs of service and decreased reliability in the electric service they receive. Specifically as concerns the Motion, Mr. Stover describes how, absent some express condition to the contrary, PacifiCorp may attempt to pass on certain costs associated with or occasioned by the merger to rural Cooperative customers in the form of corporate administrative and general corporate expenses billed as part of the Hunter II Operating agreement.¹

¹. Deseret and the Members are cooperative non-profit utilities providing electric service to rural residents and customers at cost. Unlike the Applicants, who have agreed to allocate merger-related expenses to their shareholders (except to the extent they intend to pass some such costs through to rural ratepayers), the Cooperatives have no shareholders, and must pass all such costs directly to their customers.

Applicants have already stipulated not to pass increased costs due to the merger on to PacifiCorp's **own** ratepayers; the same type of protection, however, has not been offered on behalf of the Cooperatives' ratepayers. Mr. Stover recommends that the merger be disapproved unless or until these risks have been properly addressed or remedied by the Applicants. As one alternative solution, Mr. Stover recommends conditions that would tend to mitigate the identified risks.

The Applicants' Motion seriously misrepresents Mr. Stover's recommendations. Mr. Stover has not asked this Commission to revoke PacifiCorp's certificate of convenience and necessity or to order an amendment of contracts. In the view of PacifiCorp, the Hunter II Contract does not prevent PacifiCorp from passing on merger-related costs to Cooperative customers. Applicants therefore contend that the treatment of those merger-related costs under the Hunter contract should be left to be litigated before state or federal courts.

Applicants' argument entirely misses the point. But for the merger, **there would be no need** for the litigation PacifiCorp apparently urges, no possibility of rural customers' costs being adversely affected. Those are the very impacts on rural ratepayers that Mr. Stover's testimony addresses. Applicants' argument on this Motion underscores, perhaps better than the Cooperatives' own testimony, the problems engendered by this proposed merger. Unless properly conditioned, the merger will create a probability of protracted litigation and result in very obvious risks

of increased costs to rural consumers. It is precisely for these reasons that Mr. Stover's testimony is patently relevant.

Mr. Stover suggests a method for fixing the allocation percentage of corporate general and administrative expenses that might be charged by the merged entity and passed through to the Cooperatives' Utah ratepayers. This suggestion would ensure that, by maintaining a constant relationship of corporate administrative expenses to direct operating costs, rural cooperative ratepayers will not participate in costs of completing the merger or merger-related expenses that could tend to drive up administrative costs at the corporate level.²

If the Applicants take issue with the scope or mechanics of Mr. Stover's proposed remedy, so be it. Let them put on evidence concerning what mechanism, if any, they would agree to adopt to ensure against cooperative ratepayers paying higher electric prices due to the merger. Or, if Scottish Power and PacifiCorp feel it is in the public interest that Utah cooperative ratepayers **should** pick up a portion of the costs for completing the merger and the subsequent costs of transitioning the merged company, then let them come forward with evidence to support why it is in

². Mr. Stover's testimony also expresses an opinion that risks associated with some adverse impacts of the merger could be resolved if PacifiCorp were willing, which it has emphatically stated it is not, to simply sit down and discuss with the Cooperatives a negotiated approach to service-related issues in and around member service territories. Applicant's Motion does not emphasize that portion of Mr. Stover's testimony, which in any event does not suggest any particular outcome or result, but merely encourages negotiation between the parties.

the best interest of those Utah ratepayers served by Cooperative systems to effectively subsidize the profit-driven operations of an investor owned utility.

Applicants cite no sound legal basis, and none exists, for the proposition that conditions to the merger can involve only matters within the direct scope of the Commission's typical regulatory jurisdiction.³ To the contrary, state and federal agencies have conditioned merger approvals on the voluntary acceptance of a wide range of conditions designed to protect or promote the public interest. For example, the approvals from this Commission and the FERC of the PacifiCorp/Utah Power merger included a number of such voluntary conditions ultimately accepted by the applicants.

This Commission has the authority to exclude testimony only if it is "irrelevant, immaterial or unduly repetitious." The evidence provided by Mr. Stover demonstrating the risks of higher rates to Deseret's Members and their Utah consumers as a result of the merger is certainly not "irrelevant, immaterial or unduly repetitious." Clearly, therefore, Mr. Stover's suggested conditions or measures designed to mitigate or address those risks cannot be "irrelevant, immaterial or unduly repetitious."

³. Many of the conditions suggested by Applicant's own witnesses and stipulated by the Applicants would arguably fall beyond the Commission's jurisdiction or exceed ordinary enforcement authority as customarily understood outside the context of a merger proceeding. To the extent Applicants challenge the Commission's authority to place conditions on the merger beyond the Commission's usual and customary powers, this argument calls into question whether the Applicants intend, at some date after the merger, to contest the Commission's authority to enforce any such voluntary conditions.

CONCLUSION

Deseret and its Members cannot accept that the Commission is without authority to look after the interests of the rural ratepayers in this merger. It is not enough, as the Motion would seem to suggest, that a contract exists which, ***assuming the merger were to be approved as proposed***, could provide opportunity for PacifiCorp to visit mischief on the Cooperative consumers through billings for corporate expenses. It is precisely because of this potential for mischief that the Cooperatives are entitled to reasonable protective conditions as part of the Commission's approval process.

Deseret and its Members respectfully urge this Commission to weigh the testimony and to carefully consider their proposed conditions as a means of protecting the legitimate interests of their end-use consumers.

DATED this _____ day of July, 1999.

David F. Crabtree,
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this ____ day of July, 1999, to the following:

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