

1 August 5, 1999

2:00 p.m.

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3 PROCEEDINGS

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5 (Whereupon Exhibit Cross Examination 18

6 was marked for identification.)

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8 (In camera portion of the transcript

9 is sealed and segregated from the

10 main transcript.)

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(In camera session ends.)

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1 CHAIRMAN MECHAM: Let's go back on the
2 record. We're now in open session. Mr. MacRitchie
3 remains on the stand to answer questions other than
4 those dealing with proprietary documents.
5 Apparently, we're very close to the end. Who would
6 like -- Mr. Reeder?

7 MR. REEDER: Thank you.

8

9 CROSS EXAMINATION CONTINUED

10

11 BY MR. REEDER:

12 Q We talked earlier in this record about tax
13 savings that arise, about the structure of this
14 venture and other effects. Are you familiar with
15 that topic?

16 A Yes.

17 Q ScottishPower has made several comments
18 concerning those on this record. Let's make sure we
19 understand what those comments are. Are we clear

20 that the tax savings that arise as a result of the

21 structure and other events are merger benefits?

22 A The result purely as a result of the merger

23 taking place, yes.

24 Q And if I understand correctly that the --

25 it is the position of ScottishPower that it wishes

1 the Commission to defer the establishment of the
2 value and the treatment of that tax benefit to a rate
3 case?

4 A We certainly have covered this area before.
5 But let me reiterate our position on it. We believe
6 that the savings that have been talked about are
7 certainly speculative. The value which was put --
8 was assessed by Mr. Talbot was certainly not based on
9 this particular -- this particular transaction. And
10 therefore was erroneous. I think we've cleared that
11 in closed session.

12 However, our understanding is that
13 consolidated taxes are not -- have not been
14 historically taken into account, not just in this
15 state but other states. Mainly for the wish not to
16 expose customers to the risks of consolidated tax
17 issues. And therefore, our position is we are quite
18 happy to deal with this but it's a very complex
19 issue, will require proper legal analysis,

20 investigation, and comment for the Commission to make

21 a decision on this.

22 And we are quite willing to get involved in

23 that at the appropriate time. And the appropriate

24 time is when a rate case is undertaken, since that's

25 the time that most issues are investigated in a great

1 deal of detail.

2 CHAIRMAN MECHAM: That position is clear.

3 Let's keep going.

4 Q (BY MR. REEDER) It is the position in the
5 rate case we evaluate the value and the treatment of
6 the taxes, correct?

7 A In the rate case, how we deal with the
8 issue at all.

9 Q How we deal with it at all or the value?
10 What are you saying, sir?

11 MR. VAN NOSTRAND: Objection. We covered
12 this two or three times. We directed that the
13 questions be put to Mr. Morris, who has now
14 conveniently left the stand. We did not direct these
15 questions be directed to Mr. MacRitchie. If you want
16 Mr. Morris back up there, we'll do that. But I
17 believe the record is clear. It's been asked and
18 answered by ScottishPower witnesses already.

19 MR. REEDER: It's been asked and answered

20 and we've got five different positions. I want to

21 know where we are.

22 CHAIRMAN MECHAM: I'm not sure we have five

23 different positions.

24 MR. BURNETT: Additionally, we've offered I

25 think Cross Exhibit 2, a typed up condition that

1 discussed this issue.

2 CHAIRMAN MECHAM: Actually, I agree with
3 that, Mr. Reeder. I think we've probably covered as
4 much ground as we can on this. I'm anxious to get on
5 to the motions.

6 MR. REEDER: I understand.

7 Q Let's move to the next question. Do we
8 have the commitment of ScottishPower to provide the
9 data necessary to evaluate that tax when it becomes
10 necessary?

11 MR. VAN NOSTRAND: Objection. That's part
12 of the stipulation.

13 MR. REEDER: The stipulation said they will
14 provide it under the rules as they exist if they're
15 obligated to do so, as we read it. The question is,
16 are we going to face objections about a lack of
17 jurisdiction or relevancy when we go over the tax
18 returns of the Nevada partnership? I don't want to
19 face them then. I'd just as soon face them now. Are

20 we going to get the data or not?

21 MR. BURNETT: I believe the condition we
22 drafted is clear, and we just ought to move on that
23 condition. We have plowed this ground so much, it's
24 beyond reason. Let's move on.

25 MR. REEDER: Is there an objection?

1 MR. BURNETT: I have an objection. Asked
2 and answered.

3 MR. DODGE: If I might, even though this
4 isn't my question, the applicants are trying to make
5 it sound like this issue is resolved with their
6 stipulation. It very much is not. They've reserved
7 things in there that they didn't reserve on the
8 stand. One of those I thought we had it clear and
9 that took something back, and then I thought we had
10 it clear and then it went back. Somehow it's got to
11 be resolved, what they are and are not reserving.

12 CHAIRMAN MECHAM: Are you talking with
13 respect to Cross Examination Exhibit 2?

14 MR. REEDER: Yes, sir.

15 MR. DODGE: Yes.

16 CHAIRMAN MECHAM: What of that isn't clear?

17 MR. DODGE: It isn't clear what they intend
18 to reserve, for example. Are they reserving the
19 right to argue that this Commission has no

20 jurisdiction to allocate tax savings? Because they
21 didn't include it as a condition of the merger that
22 the company voluntarily accepted? They could argue
23 the Commission has no jurisdiction to do it absent
24 voluntary compliance.

25 MR. FELL: Mr. Chairman, if counsel for the

1 industrial customers wish to argue these kinds of
2 points, they belong in their briefs. This is not
3 something that Mr. MacRitchie can start debating or
4 answering.

5 And I have one other point, and that is that
6 I fail to see how this tax issue relates to the
7 issues that Mr. Reeder has presented for special
8 contract customers when their contract prices are set
9 based upon market, not upon cost.

10 CHAIRMAN MECHAM: Well, but to the
11 degree --

12 MR. DODGE: I represent more customers who
13 are tariff customers --

14 MR. FELL: Mr. Reeder was the one who asked
15 the question.

16 MR. REEDER: For your information, sir, I
17 happen to represent a large number of Schedule 9
18 customers. So there are tariff customers sitting
19 here as there are tariff customers sitting there who

20 are very much impacted by the absence of these
21 benefits.

22 CHAIRMAN MECHAM: All right. I know nobody
23 objected on the grounds that it's asking for a legal
24 conclusion, but -- I'll ask the lawyers.

25 MR. FELL: That was the basis of my

1 objection. Jurisdiction is a legal issue that should
2 be in the briefs and not asked of witnesses who are
3 factual witnesses.

4 CHAIRMAN MECHAM: All right. I'll ask you
5 your legal opinion. What does this reserve in cross
6 examination?

7 MR. FELL: It reserves our right to argue
8 that those -- in terms of the Commission capturing
9 those tax savings, it reserves our right to argue
10 that because those are not cost of service related
11 tax issues, that they are outside of what the
12 Commission has authority to reflect in rates in a
13 rate case. We are reserving our argument on that,
14 and it is the Commission initially that makes the
15 decision on those arguments.

16 COMMISSIONER WHITE: Could I ask one
17 question on that? Exhibit 2 seems to tie into
18 Stipulation Exhibit 1. And consistent with your
19 remarks, it seems to me that Roman Numeral II,

20 regulatory oversight, is the area of the attachment
21 that governs those issues. And I understand what
22 you're reserving.

23 Am I correct in reading this to mean that the
24 regulatory agencies will have access to books and
25 records of PacifiCorp, and if appropriate and

1 necessary ScottishPower, to satisfy themselves on the
2 tax issues? Or any others?

3 MR. FELL: That's correct. You are right
4 on that.

5 MR. GINSBERG: That would include the
6 Nevada partnership, as I read this. The access to
7 information applies to all affiliates or subsidiaries
8 of any kind. And that the tax information will be
9 available. It does not address how the Commission
10 would resolve the issue on its merits.

11 MR. DODGE: That was perhaps the first
12 clear explanation I have had of their position, and
13 it's a very important one. As long as the Commission
14 understands what they're saying. Absent conditioning
15 the merger on that, they will argue you don't have
16 jurisdiction. That's all we've been trying to get
17 the company to tell us, what they intend to reserve.
18 But we can argue that in briefs.

19 CHAIRMAN MECHAM: There you have it.

20 MR. REEDER: Thank you.

21 CHAIRMAN MECHAM: Thank you, Mr. Reeder.

22 MR. DODGE: I do have one other question.

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1 CROSS EXAMINATION CONTINUED

2

3 BY MR. DODGE:

4 Q In response to one of the questions from
5 one of the Commissioners, you made the statement, I
6 believe, something to the effect that initially you
7 had promised \$10 million of annual guaranteed
8 corporate savings, and although that's now been
9 superseded by the credit, we will still deliver that.

10 Help me understand what you mean by that. Is
11 the company making a commitment that even after the
12 fourth year when the merger credit expires, there
13 will be a minimum of \$10 million corporate annual
14 savings that will go on indefinitely?

15 A Our firm commitments are in the
16 stipulation, as we've had previous testimony, that
17 the stipulation we believe provides sufficient
18 evidence to meet standard.

19 We will deliver savings, we will -- our

20 intention is to deliver in excess of the \$10 million.
21 The \$10 million was what we saw in the first instance
22 as a guarantee for customers that the merger would
23 deliver efficiencies. That's no longer required
24 since we are now putting these -- we are actually
25 bringing these efficiencies forward and delivering

1 them through the merger credit. So it's almost a
2 payment on the future cost savings.

3 But regardless, we are certainly not going to
4 forego the opportunity to take that \$10 million worth
5 of savings annually, and we would contend that that
6 will be covered in the transition plan as well as
7 others.

8 Q So the short answer to my question would be
9 it's not guaranteed?

10 A In this jurisdiction, it's not guaranteed.

11 MR. DODGE: Thank you. No further
12 questions.

13 COMMISSIONER WHITE: Is it guaranteed in
14 any jurisdiction?

15 THE WITNESS: Yes. There was -- there have
16 been different settlement discussions in each
17 jurisdiction. And in Wyoming, there was -- Wyoming
18 and Idaho, we have a minimum level of cost savings
19 because we didn't get a merger credit. The merger

20 credit was developed exclusively from discussions

21 with CCS and DPU.

22 CHAIRMAN MECHAM: Okay. No further

23 questions for Mr. MacRitchie? All right. Let's go

24 off the record a minute.

25 (Whereupon a discussion was held off the

1 record.)

2 CHAIRMAN MECHAM: Let's to back on the
3 record. We'll do redirect. I may yet ask you a
4 question later on, Mr. MacRitchie. Redirect.

5 MR. VAN NOSTRAND: Thank you, Mr. Chairman.

6

7 REDIRECT EXAMINATION

8

9 BY MR. VAN NOSTRAND:

10 Q You recall you were asked to identify where
11 in the merger agreement the provision was which
12 relates to access to books and records and the
13 restriction on interfering with the ongoing business
14 operations of PacifiCorp?

15 A Yes, I was.

16 Q Do you have before you Cross Examination
17 Exhibit 4, which is the proxy statement?

18 A I do.

19 Q Is the applicable provision Section 6.01

20 which appears at page 42 of the merger agreement in

21 the back?

22 A That's correct. It's about the seventh

23 line down. Access to the company only to the extent

24 that such access does not unreasonably interfere with

25 the business and operations of the company.

1 Q You were also asked to identify with
2 respect to the special share, the rights associated
3 with the special share in new ScottishPower; is that
4 correct?

5 A I was.

6 Q And does the description of the rights to
7 the special share of new ScottishPower appear at page
8 142 of Cross Examination Exhibit 5, which is the
9 listing particulars?

10 A Especially on page 141, Section I, there is
11 a discussion of what the special share is. And then
12 on page 142, Section 6-B gives an explanation of the
13 differences between the new share and the old share.

14 MR. VAN NOSTRAND: Thank you, I have
15 nothing further.

16 CHAIRMAN MECHAM: Thank you. Off the
17 record.

18 (Whereupon a discussion was held off the
19 record.)

20 CHAIRMAN MECHAM: Let's go back on the
21 record. We will entertain first the motion to strike
22 portions of the testimony filed by the Utah League of
23 Cities and Towns. Mr. Fell is going to argue that.
24 Mr. Allred is here to respond. Go ahead, Mr. Fell.

25 MR. FELL: Thank you, Mr. Chairman. Mr.

1 Chairman, the reason we moved to strike this
2 testimony is that we believe it's not relevant to the
3 merger issues that the Commission has to consider.
4 And also, we believe that it involves the terms and
5 conditions of franchises, which we believe are beyond
6 the jurisdiction of the Commission and matters that
7 should be resolved between the city and the
8 franchisee, PacifiCorp.

9 There are some important factual points on
10 this. First of all, the testimony requests that the
11 Commission condition its order upon PacifiCorp and
12 ScottishPower getting consents from all the cities
13 that have franchises. And that is -- that number is
14 over 100. It's a considerable number. So it's
15 obviously a huge undertaking, which may not even be
16 possible within a reasonable period of time.

17 But moving to the legal points, there is no
18 transfer of franchises, and there's no transfer of
19 assets occurring in this transaction. PacifiCorp

20 remains the same. The owners of PacifiCorp change,

21 but the company doesn't change.

22 And it's important to realize that this is

23 different from the Utah Power transaction where

24 PacifiCorp and Utah Power both merged into a new

25 company and transferred all their assets and their

1 certificates and their rights into that new company.
2 So the precedent of what occurred then really doesn't
3 apply here, because again, PacifiCorp is not
4 changing.

5 Further, the argument that there is
6 somehow -- that the Commission has authority to
7 condition the transfer or granting of certificates
8 doesn't apply because, again, there's no change at
9 PacifiCorp and no certificates are being transferred.
10 No certificates of public convenience and necessity.
11 None of that is occurring.

12 Finally, our reading of the law is that the
13 Commission does not have authority to effect the
14 terms of franchises between cities and the utilities.
15 And so we think that prodding that condition is, we
16 believe, beyond the Commission's jurisdiction. And
17 at the very least beyond the ability of the
18 Commission to control what goes on once that -- if
19 that condition were imposed.

20 CHAIRMAN MECHAM: Okay. Mr. Allred? Using
21 your microphone, please.

22 MR. ALLRED: Thank you. League of Cities
23 and Towns certainly concurs with Mr. Fell's argument:
24 This Commission is without jurisdiction to control
25 the terms and conditions of franchises.

1 That is not what the League has requested,
2 however. The League is simply requesting that in the
3 order to provide a reasonable process by which
4 franchises can be renegotiated with the new entity --
5 I'm surprised to hear, after all the testimony we
6 have heard going to net positive benefit, that Mr.
7 Fell argues that there will be no change. PacifiCorp
8 will be PacifiCorp. If that is the case, I suggest
9 that they have failed to meet their standard.

10 PacifiCorp will not be PacifiCorp.
11 PacifiCorp will have a change of control. We heard
12 testimony yesterday from Mr. Alt that there will, in
13 fact, be a change in control of ownership, of
14 management style, of operation style, and of every
15 possible benefit that can inure to the citizens of
16 the state of Utah. We believe that is a material
17 change, let alone a change in the conditions with
18 whom we will be dealing.

19 There was a change in the last merger. The

20 cities of this state believed that there would be
21 business as usual. We have learned over the last
22 decade that that was not to be the case. There were
23 a number of things where we believed that we would be
24 still facing a local company. We learned when there
25 were several hundred miles of change that attitudes

1 change, policies change, and operational information
2 made available to cities changed.

3 That will become even more great with this
4 change. And we have learned that there are things
5 that need to be done to protect the health, safety
6 and welfare of the residents of our communities, and
7 under the police power that franchises are granted,
8 we believe it is absolutely essential that those
9 changes take place.

10 And I tell this Commission and I tell
11 counsel, those changes will be effectuated. Cities
12 will demand that there be franchise reopenings. That
13 can be done in an orderly basis, or it can be done
14 one by one.

15 We are simply suggesting that this Commission
16 condition the approval on an orderly transition
17 between old franchises and new franchises. We are a
18 bit surprised that ScottishPower hasn't leaped to
19 that offer.

20 We have suggested in our responding papers
21 that the League of Cities and towns will take the
22 lead in drafting a pro forma franchise for the
23 adoption of all communities. That likely will not
24 take place without this condition being involved.

25 So we are very strongly urging this

1 Commission to encourage an orderly transition for
2 PacifiCorp to ScottishPower with the municipalities
3 of the state.

4 CHAIRMAN MECHAM: Is there a provision in
5 the franchise agreement for successors and how
6 successors should be treated?

7 MR. ALLRED: There are almost as many
8 different franchise agreements as there are cities.
9 But let me just -- the one that I am most familiar
10 with, obviously, was Salt Lake City. Talks about in
11 Article 6, the city expressly reserves and the
12 company expressly recognizes the city's right and
13 duty to adopt from time to time, in addition to the
14 provisions herein contained, such ordinances, rules
15 and regulations as may be deemed necessary in
16 exercise of the police power.

17 Reading that in context with Article 15,
18 transfer of franchise. The company shall not
19 transfer or assign any rights under this franchise to

20 another entity unless the city shall first give its

21 approval in writing.

22 CHAIRMAN MECHAM: So is your argument that

23 Salt Lake City, irrespective of what we do in that

24 agreement, can reopen the franchise agreement based

25 on what you just read?

1 MR. ALLRED: Yes, it is. That and our
2 inherent police power. I have cited in my responding
3 papers to a relatively recent FERC decision in which
4 they talk about the change of control, making the
5 opportunity for material changes and possibly
6 negative changes coming with those change of powers.

7 I should point out that we believe that
8 cities are going to do this. And we think we can do
9 it inherently under our police power. Salt Lake City
10 and others who have adopted franchises similar to
11 ours, we think we have a contractual right to do
12 that.

13 All we are asking the Commission to do is to
14 provide for an orderly process by which those changes
15 take place.

16 CHAIRMAN MECHAM: What do you have in mind
17 when you say that? It sounds to me like at least
18 under that agreement, you could argue that the city
19 can do it independently. And we've never done

20 anything with respect to franchise agreements that
21 I'm aware of, except that the law requires that there
22 be one within the service territories.

23 But when you say orderly, what kind of order
24 can we impose on the process?

25 MR. ALLRED: I think two things. I think

1 the first is you can take out of the mix the very
2 first argument that ScottishPower will make, and that
3 is that cities don't have the jurisdiction or the
4 authority to require them to come in. I think as a
5 condition, you can abrogate that very volatile issue.

6 From that point on, it will become incumbent
7 upon them to negotiate. Those negotiations will
8 either be dealt with with the League of Cities and
9 Towns acting as the facilitator, or individually with
10 the cities.

11 But we think it is not in the interest of the
12 residents of our municipalities nor of the citizens
13 of the state generally to get into an extended and,
14 frankly, expensive litigation over whether or not we
15 have all these contract rights or whether we have
16 these police powers.

17 COMMISSIONER WHITE: But whether or not
18 your cities and towns have the contract rights or the
19 police powers, in other words, a whole question of

20 whether or not you can renegotiate these franchise
21 agreements, whatever we say, you are or you aren't
22 going to have those rights. I mean, we're not going
23 to be able to give you rights you don't have or take
24 away rights you do have.

25 MR. ALLRED: With respect, I disagree. I

1 think you have ability to impose conditions upon the
2 merger. ScottishPower has the ability to accept or
3 reject those. If you impose a condition that they
4 should have franchises with each of the
5 municipalities --

6 COMMISSIONER WHITE: We would be imposing
7 conditions with you as a beneficiary, sort of?

8 MR. ALLRED: I think the residents of the
9 state of Utah as a beneficiary.

10 COMMISSIONER WHITE: Yes, I mean the
11 citizens of your city with respect to the franchise
12 agreements.

13 MR. ALLRED: Frankly, the ratepayers. I
14 assume litigation costs are going to be built into
15 rates.

16 COMMISSIONER WHITE: In concept, what
17 you're talking about is our telling the company that
18 a condition of our approving the merger is that they
19 submit to your jurisdiction in that respect and

20 negotiate franchise agreements?

21 MR. ALLRED: That they at least are willing

22 to negotiate franchise agreements. Many communities

23 may say, we are going to simply give them carte

24 blanche. Other communities may want to do that.

25 We simply want ScottishPower to come forward

1 and say, we are going to do what is in the best
2 interests of the residents of your communities, and
3 that is come in and negotiate a current franchise
4 agreement, given the change of control, given the
5 change in operations, given in many respects the
6 decades-old franchises that no longer are relevant to
7 the technology, the potential deregulation or the
8 potential regulatory influences that have taken place
9 in the last decade.

10 COMMISSIONER WHITE: So if the law already
11 would be interpreted to say that they have to do that
12 anyway, then the condition would be irrelevant?

13 MR. ALLRED: It would be irrelevant, but it
14 would move it -- the condition would move it much
15 faster and much less expensively.

16 COMMISSIONER WHITE: If the law as it turns
17 out does not give the cities and towns that right,
18 then in effect, what we would be doing is
19 conditioning the merger on their waiving the right to

20 argue that?

21 MR. ALLRED: Correct.

22 CHAIRMAN MECHAM: How old is Salt Lake

23 City's franchise agreement?

24 MR. ALLRED: Our franchise is -- frankly, I

25 think the newer ones -- Mr. Hunter would know better,

1 but ours was renegotiated after the PacifiCorp and
2 Utah Power & Light merger. We disagree that there is
3 a considerable change. Our franchise is with
4 PacifiCorp doing business as Utah Power & Light. We
5 assume that the situation would be the same here.
6 ScottishPower doing business as PacifiCorp. So we
7 think there is historical precedence for what we're
8 requesting.

9 COMMISSIONER WHITE: I have a question
10 about precedence. There have been some other
11 transfers of control or not, name changes, whatever,
12 in the telecommunications industry. Have the cities
13 and towns taken the position that they have the right
14 to renegotiate franchise agreements?

15 MR. ALLRED: We have. In fact, perhaps
16 some that I can name in the last six months. MCI
17 took over Brooks Fiberlink, which took over Phoenix
18 Fiberlink. We have insisted they do the same thing.
19 They have complied. AT&T took over TCI. They are in

20 the process now of discussing that with us. When
21 Qwest takes over U S WEST, we will make the same
22 demand. We are concerned if we don't do this with
23 ScottishPower, we will be facing an equal protection
24 claim.

25 COMMISSIONER WHITE: Is the issue being

1 litigated?

2 MR. ALLRED: No.

3 COMMISSIONER WHITE: Or are they
4 voluntarily coming in? Or do you think the law is
5 clear enough that they're required to do that and
6 they understand that?

7 MR. ALLRED: No one has threatened
8 litigation. Some have voluntarily complied, others
9 are reluctant to do so because they are afraid that
10 we will be seeking additional benefits from them.

11 I think as they become assured -- probably
12 the best example is AT&T, TCI. It becomes confused
13 because we have a cable television franchise. We do
14 not have and presently don't need to have a
15 telecommunications franchise with AT&T.

16 As their fiberoptic system comes up and does
17 video and voice, it becomes a little more difficult.
18 We will end up having two separate franchises with
19 them. As they come in with their telecommunication

20 franchises, I am confident they will accede to our
21 demand that video also is transferred. You may have
22 seen recently, they are actually now disbanding TCI.

23 CHAIRMAN MECHAM: It's really not a
24 question of law as it is operating under the terms of
25 the franchise agreement. I mean, the terms of the

1 franchise agreement are what you negotiated. The law
2 requires that a service provider have a franchise
3 agreement. I just.

4 In listening to this discussion about what
5 the law requires, the law requires they have a
6 franchise agreement. We've never really gotten in
7 the way of that, that I'm aware of. Except to the --
8 there may be a case where a certificate was either
9 slowed or maybe never came to fruition as a result of
10 not getting a franchise agreement. But I'm not aware
11 of any.

12 It's really a matter of you want this to be
13 the fifty-second condition, and they either accept it
14 with all the other conditions or they don't. So the
15 merger hangs on the fifty-second condition as well as
16 the first fifty-one?

17 MR. ALLRED: I think you've probably
18 painted it a little more vividly than I would, but I
19 think that's essentially an accurate statement, that

20 we are simply asking that there be protections for
21 our residents, much like we have looked at protection
22 for utility users, employees, any number of groups.
23 We are simply requesting that there be an expedited
24 and efficient mechanism for this transfer.

25 COMMISSIONER WHITE: You said there were

1 two components of an orderly transfer, one being a
2 condition from this Commission. What was the second
3 one?

4 MR. ALLRED: I think what I was referring
5 to is that there would be two elements to the
6 condition. Or two benefits to us of the condition.
7 First being it would be much more timely, and the
8 second, much less expensive.

9 COMMISSIONER WHITE: To some extent, it's
10 not within the control of the Commission or the
11 company how the process goes. It is very much also
12 within the control of the cities and towns also,
13 which we couldn't control.

14 MR. ALLRED: Correct. I think what you can
15 control is whether or not we start at the very base
16 issue, and that is whether or not ScottishPower needs
17 to come in and get a franchise. And you can remove
18 that barrier and move right to the negotiation stage.

19 COMMISSIONER WHITE: This is an advisory

20 opinion. If we rule against you, you can appeal

21 that, and maybe we were wrong.

22 CHAIRMAN MECHAM: He can just operate under

23 his own franchise agreement and say they've got to

24 come in.

25 MR. ALLRED: Correct. I think where the

1 problem for the Commission comes in is that if we
2 prevail, you may have granted merger to a company
3 that can't operate in most of the municipalities in
4 this state because they will not be entitled to a
5 certificate of convenience.

6 CHAIRMAN MECHAM: What's the remaining term
7 on the Salt Lake City franchise agreement? Do you
8 know?

9 MR. ALLRED: I can tell you. I think it's
10 probably about five years. Wasn't it a 15-year --

11 MR. HUNTER: Executed July 1st, 1991 it was
12 entered into. It was a 15-year agreement.

13 CHAIRMAN MECHAM: Okay.

14 MR. FELL: Mr. Chairman, one short reply.

15 I don't think this brings order to the process. I
16 think it brings chaos to it. Because Mr. Hunter
17 tells me there are over 200 franchises in the state
18 of Utah.

19 This transaction cannot get done if

20 ScottishPower and PacifiCorp are required to
21 renegotiate with all of those entities with the
22 entire transaction hanging in the balance. Either it
23 will take way too long and kill the transaction, or
24 we will be in such a negotiating position that all we
25 can do is capitulate.

1 We have our rights under those franchises.

2 Franchises have rights that go both ways. And we're
3 asking that we be able to protect those rights.

4 COMMISSIONER WHITE: Now, would it be
5 asking too much to say that whatever process you
6 become involved with between the company and the
7 cities and towns, whether you end up renegotiating
8 franchise agreements or not, I would imagine you'd
9 want to commit to having an orderly and expeditious
10 process?

11 MR. FELL: That's correct, we would.
12 Although we also would like the remaining term on the
13 franchises that we have, which allows some order to
14 the renegotiation.

15 COMMISSIONER WHITE: Right. But this
16 Commission I don't think could abrogate those
17 franchise agreements?

18 MR. FELL: That is exactly the point we're
19 making.

20 CHAIRMAN MECHAM: Okay.

21 MR. ALLRED: That isn't what is being

22 requested here. To suggest that it is to confuse

23 the issue. We are not asking to abrogate anything.

24 We are asking that they be compelled to come in and

25 renegotiate with us. The terms may very well be the

1 identical document. Excuse me, gentlemen.

2 COMMISSIONER WHITE: It's your view that
3 they're required to apply to transfer the
4 certificate?

5 MR. ALLRED: This is a material change of
6 control. We have heard days of testimony about how
7 this new entity is going to be a different entity.
8 And I won't rehash that. But this -- it's not
9 PacifiCorp. And if it is, we have no business
10 granting the applications. Because they have failed
11 to prove that there is a net positive benefit.

12 CHAIRMAN MECHAM: Okay. Does anybody have
13 any --

14 MR. FELL: There is developed law on how
15 these assignment and transfer clauses operate, and
16 they can be handled expeditiously. There is no
17 transfer from PacifiCorp to any other entity here.
18 PacifiCorp continues to operate.

19 CHAIRMAN MECHAM: All right.

20 MR. ALLRED: Mr. Fell is unfortunately, I
21 think, confusing business agreements with police
22 power agreements. Police power agreements go well
23 beyond those transfer clauses in normal business
24 relationships. The police power gives very broad
25 application to the granting authority to renegotiate

1 the terms of those conditions when the health, safety
2 and welfare of the residents suggest that it's
3 necessary.

4 CHAIRMAN MECHAM: Mr. Ginsberg, do you have
5 something?

6 MR. GINSBERG: Just what struck me about
7 it --

8 CHAIRMAN MECHAM: Turn that on, please.

9 MR. GINSBERG: What struck me about it was
10 that either the contracts allow them to be
11 renegotiated or they do not. And it seems that if
12 PacifiCorp goes ahead with the transaction and the
13 result that Mr. Allred is talking about occurs, it's
14 really their risk that they're willing to assume as a
15 result of this transaction.

16 Doesn't seem to me what the Commission says
17 with respect to requiring renegotiation of the
18 contract is real meaningful since each contract must
19 stand or fall on its own and there's apparently

20 hundreds of these contracts, and we have no idea what
21 each contract provides. Some may provide for the
22 ability to be renegotiated, some may not. Some may
23 be longer than others, some may be shorter than
24 others.

25 Just a blanket -- seems to me that it's an

1 issue between the contract between the city and the
2 utility, and if they're going to challenge the
3 ability of the utility to operate under those
4 existing franchises, seems to be up to a court to say
5 they're required to renegotiate, or someone else, and
6 it doesn't make any difference what the Commission
7 says.

8 CHAIRMAN MECHAM: I promised Mr. Allred
9 we'd be done by quarter after.

10 MR. ALLRED: May I respond to Mr.
11 Ginsberg's comments?

12 CHAIRMAN MECHAM: It's on your nickel.

13 MR. ALLRED: The first is that this is not
14 a matter of whether or not just the terms of the
15 contract apply. As I've indicated, the inherent
16 police powers suggest that contracts dealing with
17 police power issues, there is an inherent ability to
18 renegotiate those.

19 The second is, this is not a renegotiation

20 with the current franchise holder. This is a
21 renegotiation with a new entity. A new controller, a
22 new operator. And the terms ought to be set and the
23 residents ought to be assured that they have the best
24 deal that they can get with that new company.

25 CHAIRMAN MECHAM: Okay. We'll take the

1 issue under advisement. Thank you. Let's go off the
2 record.

3 (Whereupon a discussion was held off the
4 record.)

5 (Whereupon Exhibits SP 7 and 8 were
6 marked for identification.)

7 CHAIRMAN MECHAM: Back on the record. We
8 have on the stand Mr. Marron representing
9 ScottishPower. We also marked two stipulations which
10 he'll address. The first is Stipulation of
11 Settlement Issues Related to Public Purpose Programs
12 which we marked as SP 7. Then we marked the second
13 one, second stipulation, entitled Stipulation of
14 Settlement of Issues Related to Low Income Customers,
15 as SP 8. Mr. Marron, let's swear you in.

16

17 MICHAEL MARRON,

18

19 Having been duly sworn, was examined and

20 testified as follows:

21

22 DIRECT EXAMINATION

23

24 BY MR. HUNTER:

25 Q Please state your name.

1003

1 A Mike Marron.

2 Q By whom are you employed?

3 A ScottishPower.

4 Q And what are your current responsibilities
5 in the U.S.?

6 A I'm a member of the ScottishPower U.S.
7 merger team. And my role over here was one of the
8 members of the executive communications program.
9 While I've been here, I've also led discussions on
10 energy efficiency matters, conservation, and low
11 income.

12 Q What's your background, Mr. Marron?

13 A I've been an employee of ScottishPower for
14 over 30 years. I'm joining -- in the IT section.
15 Since 1994 to 1997, I've been involved in designing
16 and implementing change programs.

17 I managed a change program looking at how
18 customer service should be implemented in a modern
19 utility and then set up and ran the deregulation

20 program for ScottishPower.

21 Between the years of 1997 and 1998, I was
22 customer service director with the responsibility for
23 the delivery of all aspects of customer service in
24 the ScottishPower energy businesses in the U.K.

25 Since January of this year, I was development

1 director with the MRA Service Company, which is a
2 company owned by all the licensees on the
3 electricity/utility sector in the U.K. with
4 responsibility for running the deregulated market.

5 Also during that period of time was a founder
6 member of the U.K. social inclusion advisory group,
7 which was set up to advise U.K. Ministers on their
8 social inclusion program which was targeted at
9 helping low income families in the U.K.

10 Q Turning first to ScottishPower Exhibit 7,
11 which is the public purpose stipulation, were you
12 involved in the negotiation of that stipulation?

13 A Yes, I was. I led in behalf of
14 ScottishPower.

15 Q You are familiar with its terms?

16 A I am.

17 Q Would you explain what it does?

18 A This stipulation resulted from the direct
19 testimony, particularly from the Land and Water Fund

20 of the Rockies and the Office of Energy and Resource
21 Planning here in Utah. Where both parties -- the
22 positive benefits that ScottishPower was proposing
23 under their renewable energy efficiency proposals, it
24 did have a number of direct questions on what we
25 meant by our commitments.

1 What we actually did was have a series of
2 discussions with the parties to clarify our intent
3 and to make sure that we could identify how the
4 PacifiCorp customers here in Utah would benefit from
5 such a stipulation. The results of those discussions
6 is, in fact, in the stipulation.

7 Q Who were the parties to the stipulation?

8 A The Oregon Office -- the Oregon Office of
9 Energy and Resource Planning, the Land and Water Fund
10 of the Rockies --

11 Q Do you want to try that one more time?

12 A Sorry. The Oregon -- sorry. Sorry about
13 that. The Utah Office of Energy and Resource
14 Planning, my apologies. I thought I knew where I
15 was, but I'm happy to be here. The Land and Water
16 Fund of the Rockies, PacifiCorp, and ScottishPower.

17 Q In your view, is this stipulation in the
18 public interest?

19 A It is. What the stipulation does is it

20 provides a framework for dealing with environmental
21 issues between interested parties and the company
22 here in Utah. It highlights ScottishPower's
23 partnership approach. And the objective we have, the
24 parties to the stipulation and the company, is to
25 improve our environmental performance while

1 maximizing the impact of our investment and assuring
2 the prudence of that investment.

3 It's in line with the stipulation that was
4 achieved between the companies, the DPU, and the CCS,
5 and particularly conditions 40 and 41, and recognizes
6 the benefit of the integrated resource planning
7 process and the need to show a prudence if the
8 investments are to be included in any future rates.

9 It also reiterates testimony on the
10 development of 50 megahertz of renewable resources
11 within five years and indicates our willingness as a
12 company to look at the possibility of placing some of
13 these resources in Utah.

14 It highlights our commitment to filing a
15 tariff within 60 days of approval of the merger, and
16 also, it commits the company to continue to support
17 funding for cost effective and prudent energy
18 efficiency activities here in Utah.

19 In this stipulation, the companies also

20 recognize that what has been undertaken by the energy
21 efficiency and renewable task force and the western
22 regional partnerships, what has been undertaken there
23 in many cases is areas which were not covered in our
24 original testimony. And we've agreed to continue to
25 support these activities.

1 Finally, the company recognizes the need to
2 develop environmental policies which balance the
3 interests. We've clarified our intent to establish a
4 forum along similar lines as we have in the U.K.
5 which includes academics, industrialists, and
6 environmentalists and major customers to ensure that
7 we consider our environmental strategies and
8 policies, taking into account external expertise and
9 perspective on this basis.

10 As I said, what this is all about is in fact
11 improving our investment in renewables while ensuring
12 we maintain a balanced portfolio to deliver the
13 energy needs of our customers, and of course,
14 business prudence.

15 The development of this agreement, I believe,
16 highlights ScottishPower's approach to partnership
17 working, identifying where there are common issues
18 that we can come together where people have interest
19 in these subjects, and assures that we deliver a

20 positive benefit as a part of the merger for the

21 customers of Utah Power here in Utah.

22 MR. HUNTER: Mr. Marron is available for

23 cross.

24 CHAIRMAN MECHAM: Thank you. Is there any

25 examination for Mr. Marron?

1 MR. DODGE: One quick question.

2

3 CROSS EXAMINATION

4

5 BY MR. DODGE:

6 Q The stipulation indicates it's submitted to
7 the Commission for approval. It makes it clear the
8 Commission isn't bound by anything. Can you explain
9 what is intended by Commission, quote, approval of
10 the stipulation?

11 A The key aspects we wanted to make sure was
12 to put the stipulation on the record as it details
13 our commitments, to recognize there was no conflict
14 between the main stipulation. It was debated on
15 Monday and Tuesday and, in fact, just records what we
16 intend to do.

17 MR. DODGE: Thank you. No further
18 questions.

19 CHAIRMAN MECHAM: Mr. Mattheis?

20 MR. MATTHEIS: No questions.

21 MR. REEDER: No questions.

22 CHAIRMAN MECHAM: Mr. Ginsberg?

23 MR. GINSBERG: Just to follow up.

24

25 ///

1 CROSS EXAMINATION

2

3 BY MR. GINSBERG:

4 Q Is it the intention that the stipulation
5 appear as somehow conditions in the Commission's
6 order or just that it be reflected in the order as
7 being a stipulation that's been entered into between
8 you all and the Land and Water Fund?

9 A I would look for some legal advice on a
10 technicality. Our intent is that stipulation 40 and
11 41, the main stipulation, identify certain aspects of
12 how we're going forward. In the appendix to that
13 stipulation, we highlighted all of our commitments
14 that were covered by Mr. Richardson's original
15 testimony.

16 What we're recording here is in fact
17 commitments we're making on record and how we intend
18 to work with the parties on this to move forward.

19 Q So you don't view what you've done here in

20 this stipulation as different than what you already
21 committed to in Mr. Richardson's supplemental
22 testimony?

23 A I think it goes farther forward than Mr.
24 Richardson's supplemental testimony, because it
25 clarifies a number of issues and also identifies a

1 framework of how we can move forward and work
2 together. So it's a clarification and a number of
3 extra commitments.

4 For instance, what we're committing to is
5 seeking to actually place resources here in Utah.
6 Because the other commitment was just more general
7 than that.

8 MR. GINSBERG: Thank you.

9 CHAIRMAN MECHAM: Ms. Walker?

10 MS. WALKER: Just that I'd like to get our
11 direct and rebuttal testimony on the record. It's
12 already been marked I think as LWF 1 and 2.

13 MR. TINGEY: Also the testimony of Mr.
14 Burks.

15 CHAIRMAN MECHAM: Off the record a minute.

16 (Whereupon a discussion was held off the
17 record.)

18 (Whereupon Exhibits LWF 1, 1R, Exhibit
19 OERP 1 and Exhibit Crossroads 1 were

20 marked for identification.)

21 CHAIRMAN MECHAM: Back on the record.

22 While off the record, we marked Mr. Nielsen's

23 testimony as LWF 1 and his rebuttal as LWF 1R. It's

24 been offered in support of this stipulation which we

25 marked as SP 7. We also marked Mr. Jeff Burks's

1 testimony as OERP 1, also offered in support of SP 7.

2 Is there any objection to the admission of
3 SP 7, LWF 1, LWF 1R, and OERP 1? We'll admit them.

4 (Whereupon Exhibits SP 7, Exhibits LWF 1
5 and 1R and Exhibit OERP 1 were admitted
6 into evidence.)

7 CHAIRMAN MECHAM: Why don't we move to the
8 next stipulation, SP 8.

9

10 DIRECT EXAMINATION

11

12 BY MR. HUNTER:

13 Q The next stipulation relates to low income
14 customers. You were also involved in the negotiation
15 and are familiar with the terms of this stipulation?

16 A I am.

17 Q Would you please explain what it does?

18 A Yes. This stipulation is between
19 PacifiCorp and ScottishPower, Crossroads Urban

20 Center, and Salt Lake Community Action Program. It
21 details the company's commitments in relation to low
22 income customers, and again, it refines the original
23 proposals as defined in Mr. Richardson's supplemental
24 testimony, which is included as an attachment in the
25 main stipulation.

1 But what it basically seeks to do is to
2 address the needs of PacifiCorp's low income
3 customers here in Utah.

4 Q Excuse me. In your view, is it in the
5 public interest?

6 A Yes, it is. It confirms that the company
7 will support the implementation of a lifeline rate in
8 Utah. In addition, we confirm our intent to the
9 partners, including Low Income Task Force, to
10 implement simple programs which make electric service
11 more affordable for low income customers in Utah.

12 The approach proposed will ensure that
13 programs identified will be implemented in a cost
14 effective manner and deliver real sustainable benefit
15 to PacifiCorp's low income customers.

16 Finally, to assist in the development of the
17 programs, the company will make available \$300,000
18 per year for the three years after the merger is
19 approved, and this is over and above any funds spent

20 on similar programs in 1998.

21 As reflected in Jack Kelly's testimony, we've

22 got many experience of working with groups such as

23 the people supporting this stipulation in the U.K.

24 We have examples of where we've delivered real

25 benefit to customers, not only who have been targeted

1 by these programs but to the broad customer base.

2 This approach builds on that approach in the U.K.

3 But what else it does is tailors the approach

4 suitable for what is needed here in Utah. Over the

5 last few years, there has been very little funds

6 actually spent in this area, in this state. And the

7 commitment of \$300,000 is a major improvement on what

8 is currently a benefit.

9 By tailoring the approach to meet the needs,

10 we will deliver benefits across the customer base.

11 If you can implement programs such as these so low

12 income customers can have methods of more sustained

13 means of paying for electricity used, the whole

14 organization can focus on improving service.

15 In our opinion, this approach is not only

16 something that we want to do in line with our values

17 to our customers and their communities, but it makes

18 good business sense.

19 In the U.K. this approach is winning us

20 customers in a competitive market where many people
21 believed that these particular customers could not be
22 targeted. And the environment that exists in Utah,
23 this approach will deliver benefits to the customers
24 specifically targeted in a certain area but will also
25 deliver benefits across the whole customer base. And

1 that's why we are proposing this stipulation.

2 Q Once again, this stipulation reflects
3 promises made by the company, but it doesn't seek to
4 bind the Commission to anything, does it?

5 A No. The money being offered here will not
6 actually flow through to the rate base.

7 Q Shareholder money?

8 A Shareholder money, yes.

9 MR. HUNTER: Thank you. Mr. Marron is
10 available for cross.

11 MR. DODGE: No questions.

12 MR. MATTHEIS: No questions.

13 MR. REEDER: No questions.

14 CHAIRMAN MECHAM: The \$300,000 is for
15 programs other than the lifeline rate?

16 THE WITNESS: Yes. What we said is we'd
17 support the lifeline rate through whatever process
18 that goes through. But there will be \$300,000
19 available to work on these other programs.

20 CHAIRMAN MECHAM: All right. Anything
21 further for Mr. Marron? Okay. Is there any
22 objection to the admission of SP 8, which is the
23 stipulation that he's been describing, or to
24 Crossroads 1, which we marked while we were off the
25 record, which is Mr. Jeff Fox's testimony submitted

1 in this case? Hearing none, we'll admit them.

2 (Whereupon Exhibit SP 8 and Exhibit

3 Crossroads 1 were admitted into

4 evidence.)

5 MR. HUNTER: May Mr. Marron be excused?

6 From the country?

7 CHAIRMAN MECHAM: Yes.

8 (Laughter.)

9 CHAIRMAN MECHAM: Let's take a recess.

10 (Whereupon a recess was taken.)

11 CHAIRMAN MECHAM: Let's go back on the

12 record. We'll now hear from Dr. Goins, representing

13 Nucor. Why don't we swear you in.

14

15 DENNIS W. GOINS,

16

17 Called as a witness, having been duly

18 sworn, was examined and testified as

19 follows:

20

21 DIRECT EXAMINATION

22

23 BY MR. MATTHEIS:

24 Q Dr. Goins, could you please state your name

25 and business address for the record.

1016

1 A My name is Dennis Goins. My business
2 address is 5801 Westchester Street, Alexandria,
3 Virginia 23310.

4 Q Could you spell your name?

5 A G-O-I-N-S.

6 Q You're the same Dennis Goins that submitted
7 direct and rebuttal testimony on behalf of Nucor
8 Steel?

9 A Yes, I am.

10 MR. MATTHEIS: I'd ask that Dr. Goins's
11 direct testimony be marked as Nucor -- Exhibit Nucor
12 1 and that Dr. Goins's rebuttal testimony be marked
13 as exhibit Nucor 1R.

14 CHAIRMAN MECHAM: Are there any
15 attachments?

16 MR. MATTHEIS: No, there are not, Your
17 Honor.

18 (Whereupon Exhibits Nucor 1 and 1R were
19 marked for identification.)

20 Q (BY MR. MATTHEIS) Do you have any
21 corrections to make to this testimony?

22 A I have two, and both are on page 11 of the
23 direct testimony. Footnote 14, the word Oregon
24 should be Utah. And in footnote 16, the word Oregon
25 should be Utah.

1 Q On the basis of information you have
2 received since filing your testimony, including the
3 stipulation filed in this docket, have you formulated
4 any changes to the conclusions and recommendations
5 that you stated in your direct and rebuttal
6 testimonies?

7 A Yes, I have. On the basis of examining the
8 stipulation as it was filed by the parties, that
9 stipulation covers several of the areas of concern
10 specifically addressed in my direct and rebuttal
11 testimony.

12 For example, the issue of the transfer of
13 immediate merger related savings through a rate
14 reduction is addressed through the so-called merger
15 credit. And the issue of divestiture of assets is
16 also addressed in the stipulation. And some of the
17 others are to a lesser degree.

18 However, the two, in my opinion, two of the
19 more important concerns, and -- are not addressed by

20 the stipulation, either at all, or adequately.

21 The one that's not addressed adequately is

22 the sharing of merger related savings on an equitable

23 basis. And in particular, between the various

24 stakeholders. And I'm still of the opinion that the

25 stipulation does not produce an equitable sharing of

1 those merger related savings or benefits at a
2 reasonable fashion.

3 Secondly, from the standpoint of the customer
4 that I represent, Nucor Steel, which is a special
5 contracts customer, the only class of customers
6 specifically excluded from merger related protections
7 in the stipulation are special contract customers.

8 To me, I find this not only inequity an but
9 discriminatory. I've heard -- read the transcript
10 from the early days of the hearing, Monday to
11 Tuesday, and I was here for part of the testimony
12 yesterday. And the only justification that I've been
13 able to glean for the omission of the special
14 contract customers is that they are not deserving of
15 special protection or protection from merger related
16 risk, given that they have the special contracts that
17 they sign.

18 Notwithstanding the fact that most, if not
19 all, of these contracts will expire and have to be

20 renegotiated at some point during the so-called
21 four-year transition plan through the year 2003. For
22 example, the Nucor contract I think expires in
23 February of 2002 I think is the date.
24 So the prime risks that I've identified in my
25 testimony are still not addressed adequately, even

1 though the stipulation did address some of the issues
2 that I raised. And as a result of that, I still come
3 to the conclusion that the transition savings as they
4 are defined by the various witnesses are speculative
5 at best. The stranded cost issue that I raised in my
6 testimony is totally ignored.

7 And most importantly, the largest customers
8 that are under special contracts are exposed to risks
9 that no other ratepayer under the stipulation is
10 exposed to.

11 As a result of that, I am recommending now
12 that -- in my original testimony, I had recommended
13 as part of the protections through this that there be
14 an immediate rate reduction followed by -- that would
15 apply to all non-special contract customers, followed
16 by a five-year rate freeze that would be applicable
17 to all customers, including special contract
18 customers.

19 And covered within that, I had recommended

20 that special contract customers at their option be
21 given the choice of extending their contracts only
22 for the duration of the transition period. And at
23 that point, their contracts would be up for renewal
24 outside the scope of the transition period and the
25 protections of the merger. Embodied within the

1 stipulation.

2 So as a result, I am recommending still that
3 instead of a rate freeze, I'm now recommending that
4 there be an immediate rate reduction which is taken
5 care of largely, in essence, by the merger credit,
6 and that there be imposed a rate cap to essentially
7 lock in both merger related savings and to give the
8 new entity, PacifiCorp owned by ScottishPower,
9 stronger incentives to achieve these merger related
10 savings that are claimed by the various witnesses for
11 the applicants.

12 And within that context, that the contracts,
13 the special contracts would be covered by this rate
14 cap for the transition period, which would
15 essentially mean that they would be extended for the
16 transition period under their current terms and
17 conditions.

18 Q Thank you, Dr. Goins.

19 MR. MATTHEIS: I'd like to move for the

20 admission of the testimony previously marked, I

21 believe Nucor 1 and Nucor 1R.

22 CHAIRMAN MECHAM: Objections? We'll admit

23 them.

24 (Whereupon Exhibits Nucor 1 and 1R were

25 admitted into evidence.)

1 MR. MATTHEIS: Dr. Goins is available for
2 cross.

3 CHAIRMAN MECHAM: Mr. Van Nostrand.

4 MR. VAN NOSTRAND: Thank you.

5

6 CROSS EXAMINATION

7

8 BY MR. VAN NOSTRAND:

9 Q Good afternoon, I'm James Van Nostrand
10 representing ScottishPower. I'd like to go through
11 your testimony and see if perhaps some of the other
12 items you've covered in your testimony are addressed
13 by the terms of the stipulation.

14 And one point in particular, at the top of
15 page 5 you discuss and you recommend that the
16 companies be prohibited from recovering the
17 acquisition premium in rates unless ScottishPower can
18 demonstrate with reasonable certainty that the merger
19 related benefits equal or exceed the acquisition

20 premium. Is that a correct reading of your

21 testimony?

22 A Yes.

23 Q And you later on indicate that the value

24 you would put on the acquisition premium is

25 \$1.6 billion?

1 A I said that the value that had been
2 provided by two different sources ranged I think from
3 1.3 to \$1.6 billion.

4 Q So under the recommendation that you have
5 in your testimony, you would propose that
6 ScottishPower would be permitted to recover up to
7 \$1.6 billion of the acquisition premium in rates to
8 the extent they can show it offset by merger savings?

9 A Yes.

10 Q You recognize, don't you, that
11 ScottishPower is not seeking to recover the
12 acquisition premium in rates and never has?

13 A Well, I don't know that you never had. I
14 do recognize that -- I think it's Article 9 of the
15 stipulation. Not Article 9 but Article 26.
16 Essentially, it says that you forego any recovery
17 through rates of the merger premium.

18 Q So is it fair to say that you now
19 understand that there won't be any acquisition

20 premium recovered in rates, and therefore, that issue

21 you raise in your testimony has been addressed?

22 A Yes.

23 Q I believe you also indicated the

24 divestiture of available generation and transmission

25 assets which you discuss as Number 5 on that page

1 would also be addressed?

2 A Yes. I think that Article 9 of the
3 stipulation deals with divestiture of assets. The
4 only question that I had about that component is what
5 was meant by integrated utility function. And even
6 after reading the transcript and hearing the
7 witnesses that have talked about that, I'm still not
8 clear what an integrated utility function is.

9 I would assume that the word assets, which
10 was included in the stipulation condition -- not the
11 stipulation condition but for one of the merger
12 conditions that the DPU originally filed, would have
13 been included in Article 9 of the stipulation that is
14 now before the Commission. However, the word assets
15 was omitted. And I'm not sure why.

16 Q If we look at another item in your
17 testimony, number 7 on page 4 refers to the
18 commitment to develop an additional 50 megawatts of
19 renewable resources?

20 A Yes.

21 Q And is it possible that conditions 40 and
22 41 of the stipulation would address your concerns to
23 the extent that PacifiCorp commits to continue to
24 produce renewable resource plans and any investment
25 of renewable resources must be shown to be prudent

1 before it will be recovered in rates?

2 A Yes, it does.

3 Q I believe you discussed in your summary
4 your proposal that existing contracts with industrial
5 customers should be extended to coincide with -- I
6 believe the term you used was the four-year
7 transition period; is that right?

8 A That's correct.

9 Q Are you familiar with the Commission's --
10 Utah Commission's current practice with respect to
11 the approval of special contracts?

12 A I know that there is a special approval
13 process for each contract.

14 Q And were you present when Mr. Alt testified
15 on behalf of the Division?

16 A No. I read the transcript.

17 Q Did you read the transcript, in particular
18 page 366 lines 15 to 23, where he states as follows:
19 One of the criteria was that for firm special rates,

20 the customer had to have another alternative. In
21 other words, the customer already had the choice of
22 getting their electricity from another source,
23 self-generation primarily, and that if they didn't
24 get the special subsidized rate, they would
25 exercise -- the threat was they would exercise their

1 right, the alternative? Does that sound familiar?

2 A Well, he said it. I'm not sure -- he
3 didn't identify the customers or the number of
4 customers that are on special contract that had that
5 option or what those options were.

6 I wouldn't second-guess the fact that some
7 customers may have the option of co-generating. I
8 don't know what the other options might be that are
9 readily and easily available to the customer.

10 Q Is it your understanding in order to get a
11 special contract approved by the Commission, that the
12 customer must demonstrate an alternative?

13 A I know that's one of the terms that's used.
14 I'm not sure how it's applied. There are a number of
15 conditions that I've read that are applicable for
16 demonstrations that a special contract is wanted.

17 Q Is it fair to say that your proposal that
18 the contracts automatically be extended for five
19 years would be a departure from that existing

20 Commission practice?

21 A I have not recommended that in light of the
22 stipulation that's been filed. I've recommended that
23 they be extended only for the duration of the
24 transition, four-year transition period.

25 Q Okay. To the extent the contracts will be

1 extended for four years, in the absence of a showing
2 of an alternative, is not that a departure from the
3 existing Commission practice with respect to the
4 approval of special contracts?

5 MR. MATTHEIS: I'm going to object if he's
6 asking for a legal opinion as to what might be
7 outside what the Commission's practice is. If you're
8 asking Dr. Goins to state his opinion or what he
9 might know, I wouldn't have any objection.

10 CHAIRMAN MECHAM: Let's go that route.

11 MR. MATTHEIS: Thank you.

12 Q (BY MR. VAN NOSTRAND) From the practice
13 of the Utah Commission, as you understand that, would
14 it not be a departure from that practice for these
15 contracts to be automatically extended for the
16 four-year transition period without a showing of an
17 available alternative?

18 A Well, I'm sorry, I don't know, because
19 we've never had this situation in which there's a

20 takeover of the initial supplier within the contract
21 signed and which these special contract customers are
22 exposed to merger related risks that the other
23 non-special contract customers are not exposed.
24 Given that we haven't had that situation, I'm not
25 sure what the Commission would do.

1 Q You're recommending that the special
2 contracts just be extended without the requisite
3 showing that alternative is available?

4 A I'm recommending the special contract
5 customers be given the same protection as non-special
6 contract customers covered by the stipulation.

7 That's all. I'm not asking for any special
8 treatment, any more favorable treatment than another
9 customer. I'm simply saying, let those customers
10 have the same protections from merger related risk as
11 non-special contract customers are given under the
12 stipulation. That's all.

13 Q And don't they have the same protections in
14 the form of the alternatives that are available to
15 them which allow them to get a special contract in
16 the first place?

17 A Again, I have never seen any of those other
18 contracts other than Nucor's. So I have no idea of
19 what their alternatives or options or what the

20 contracts say.

21 Q I'd like to cover your testimony. You
22 submitted some testimony in a FERC proceeding which
23 you provided to us in response to Data Request 2. Do
24 you have that available to you?

25 A No.

1 MR. VAN NOSTRAND: Will you provide him a
2 copy?

3 MR. MATTHEIS: I don't have it.

4 MR. VAN NOSTRAND: The witness has my only
5 copy; I'm trying to get another one.

6 Q Do you recognize the documents that have
7 been handed to you as your testimony on a FERC
8 proceeding regarding the merger between DQE and
9 Allegheny Power?

10 A Yes, I do.

11 Q And in that testimony, you found that the
12 merger presented market -- that merger presented
13 market concentration issues?

14 A Market power issues, that's right.

15 Q This was the application of the FERC
16 Appendix A screens in that case?

17 A The competitive analysis screen required by
18 the FERC.

19 Q And we could turn to your testimony in that

20 case. One of the things you did was analyze the
21 testimony presented by the applicant's witness, Dr.
22 Pfeifer?

23 A Howie Pfeifer, yes.

24 Q One of the things you criticize is the
25 remedy for those competitive problems, he recommended

1 the utilities join a currently nonexistent Midwest

2 ISO. Is that correct?

3 A Yes. To the extent that Mr. -- Dr. Pfeifer

4 was saying that the market power problems were

5 created by the merger in certain destination markets,

6 both power markets, could be remedied by a number of

7 conditions, one of which was that both Allegheny and

8 DQE join an ISO.

9 Q And you further state his plan was

10 inaccurate for three reasons, one of which is that a

11 Midwest ISO does not yet exist and no plan for an ISO

12 has been filed for the Commission's review and

13 approval? Is that correct? Page 20.

14 A Page 20, around line 21, yes. That was the

15 first reason I gave.

16 Q And turning over to page 22, you stated it

17 was speculative as to whether it was an adequate

18 remedy to join a not-yet-formed Midwest ISO?

19 A Yes. What I said was that the Commission

20 should not rely on this promise to join a nonexistent
21 ISO as the remedy for the market power problems,
22 which were enormous in this merger. This merger was
23 ultimately withdrawn. But the problems were so
24 serious that simply saying that you were going to
25 join an ISO didn't solve the problem.

1 Q I think you also say in that testimony that
2 whether or not membership in an ISO provides an
3 adequate remedy depends on the ISO's membership
4 structure? Do you recall that?

5 A You would have to show me.

6 Q Page 5 line 18.

7 A Is this on the initial testimony?

8 Q I believe so.

9 A It must have been on the other one.

10 Q Try the other one.

11 A No, this was -- a second remedy that Dr.
12 Pfeifer and DQE/Allegheny proposed was that they
13 would -- to mitigate these market power problems was
14 that they would make a temporary sale of 570
15 megawatts of generation. And under the so-called
16 competitive analysis screening, that sale brought
17 them within the threshold constraints of the HHI -- I
18 hate to get into all this -- guidelines. In other
19 words, they would meet the market power test.

20 And what I've said there was that this sale,
21 this temporary sale, would not -- whether it would
22 mitigate the market power concerns dealt critically
23 with the structure of the Midwest ISO. The
24 nonexistent ISO.

25 Q It would be speculation as to who was in

1 that ISO, how it was constructed, as to whether or
2 not that would provide an adequate remedy for the
3 competitive concerns?

4 A That was part of it as it related to this
5 sale.

6 Q Would you agree the utility has the limited
7 ability over the participation by other utilities in
8 an RTO or ISO?

9 A Well, there -- I don't know whether it has
10 limited. There's certainly a number of groups that
11 have either formed, created, that have approved ISOs
12 or are filing before FERC for approval for such.
13 There are alliances, and I don't mean that to mimic
14 the name of one that's before the FERC, but of
15 utilities that are proposing these already. In other
16 words, they're lining up for the market.

17 Q And in turn, there have been some efforts
18 to form regional transmission organizations that have
19 failed, notwithstanding years of effort?

20 A That's true.

21 MR. VAN NOSTRAND: Thank you, I have no

22 further questions of this witness.

23 CHAIRMAN MECHAM: Thank you. Mr. Hunter?

24 MR. HUNTER: Just a couple.

25 ///

1 CROSS EXAMINATION

2

3 BY MR. HUNTER:

4 Q You indicated that some customers have
5 special contracts, may not have "but for" options.
6 Is it your contention Nucor doesn't have "but for"
7 options?

8 A I can't discuss Nucor's contract as I see
9 it, as it's under protective order, the way I read
10 it.

11 Q This is the August 18th, 1997 order from
12 the Commission approving the Nucor agreement. Would
13 you read that sentence right there.

14 A This one?

15 Q Yes.

16 A Okay. Nucor has given notice of its
17 intention to terminate the agreement.

18 Q So Nucor at that time, at least, thought it
19 had an option? Terminated the contract. It must

20 have had some other way to get electricity?

21 A I don't know what Nucor thought at that

22 time when that sentence -- what that sentence means

23 in relation to that.

24 MR. HUNTER: Thank you, that's all I have.

25 CHAIRMAN MECHAM: Mr. Ginsberg?

1 CROSS EXAMINATION

2

3 BY MR. GINSBERG:

4 Q Dr. Goins, you indicated two areas that you
5 felt were left open from the stipulation. And the
6 first you described as inadequate benefits to
7 stakeholders; is that right?

8 A That's right.

9 Q And what were you referring to there?

10 A Well, I think we've seen, at least in my
11 satisfaction, that there may be significant savings
12 that will result from this merger that, prior to the
13 last few days, had not even been discussed.

14 And I'm referring specifically to the tax
15 related savings. There may be others. But, I mean,
16 that's a major -- potentially a major merger related
17 savings that's not addressed by this stipulation.

18 Q Do you see the purpose of an approval
19 process like this to meet the standard that was

20 proposed or to deal with all possible benefits, now

21 and in the future?

22 A The only standard I use is that the merger

23 must produce a net positive benefit. And my

24 contention was that those benefits, according to the

25 way I read the standard, must be not only

1 identifiable and quantifiable, but must also be
2 attributable to the merger. That is, they could not
3 occur absent the merger.

4 And the only thing I'm saying is in order to
5 make an evaluation of that net positive benefit, we
6 ought to have all those savings on the table.

7 Q The special contract issue, your premise
8 that you've referred to, if you look on page 7 of
9 your rebuttal testimony, is that special contracts
10 should get the same treatment as all other customers.
11 And that's based on the premise that I believe you're
12 still proposing a rate freeze? Is that right?

13 A A rate cap.

14 Q How would that rate cap work? Just for
15 five years or --

16 A For the --

17 Q -- that rates could not change?

18 A I'm sorry. No, for the five -- the
19 transition period, there would be a cap placed -- for

20 the four-year transition period, there would be a cap
21 placed on current rates at the time that the
22 transaction was approved.

23 Q So your request to have a rate reduction
24 you feel has been satisfied by the rate credit, but
25 your rate cap that you originally proposed was not

1 addressed by the stipulation?

2 A What I said -- the rate reduction is
3 satisfied to a certain degree. I'm not sure the
4 \$12 million or the \$48 million or the \$24 million for
5 two years, plus potentially 24 if not offset, is a
6 meaningful sharing of the merger related savings that
7 can be identified through this transaction.

8 And what I said is that the improvements are
9 still -- the quality improvements, service
10 improvements are still speculative. We don't have a
11 transition plan before us to do an evaluation until
12 six months after the merger.

13 And customers, in particular special contract
14 customers, during this four-year transition period,
15 are being exposed to risk that I don't believe
16 non-tariff customers are exposed to.

17 Q But if I read your testimony, your premise
18 as to equal treatment is based on your proposal of a
19 freeze? The tariff rate customers' rates would not

20 go up? Is that right?

21 A I said I would cap rates, not freeze them.

22 And that I would -- that would apply across the board

23 for all customers.

24 CHAIRMAN MECHAM: Is your distinction that

25 rates could go down, they just can't go up, when you

1 cap them as opposed to freeze them?

2 THE WITNESS: Yes. That's one distinction.

3 Yes.

4 MR. GINSBERG: You understand the

5 stipulation --

6 THE WITNESS: Or they could go up -- Mr.

7 Alt had proposed or the DPU have proposed what they

8 call a rate cap, which could go up or down. I didn't

9 agree with that. But that was his proposal.

10 CHAIRMAN MECHAM: I'm trying to get at what

11 you would propose.

12 Q (BY MR. GINSBERG) You understand the

13 stipulation provides a rate credit but allows rate

14 cases to be treated independently. Do you understand

15 that?

16 A Yes. And I think -- I've heard and read

17 through the transcripts and heard through the

18 witnesses that a series of rate cases over the next

19 few years is highly likely.

20 Q So how are -- special contract customers

21 are protected from those rate increases, are they

22 not? For the period of their contract?

23 A If a special contract customer's contract

24 is up next year, for example, the answer is obviously

25 no. Mr. Alt was very clear in what the option for

1 that special contract customer was. And that is that
2 if you can't cut a deal or meet the requirements, if
3 you can't cut a deal with ScottishPower or meet the
4 requirements of the special contract conditions, then
5 go back to Schedule 9. Schedule 9 is going to be
6 subject to all of those rate increases. Which puts a
7 double whammy --

8 Q I'm sorry, my question was, for the period
9 of the contract that you have, you're not subject to
10 any rate changes, are you?

11 A You may be, depending upon how your
12 contract is structured.

13 Q And each contract --

14 A Just because you have a special contract
15 doesn't mean that the price you pay every year is
16 fixed.

17 Q They're certainly not subject to the rate
18 increase that would be -- tariff customers might be
19 subject to; is that right?

20 A It may be a rate decrease that the
21 Commission found was adequate. And if that happened,
22 the special contract customers would not see it.

23 Q Are you -- do you participate for Nucor on
24 the Special Contract Task Force?

25 A I attended one meeting.

1 Q Do you follow it at all?

2 A Not on an ongoing basis, no.

3 Q Have you reviewed the term? Do you
4 understand its purpose to be to look at criteria for
5 dealing with extensions of new special contracts?

6 A Yes, I certainly do.

7 Q How do you view the task force
8 recommendations? Do you understand that they are to
9 be completed by the end of this year?

10 A There is a report due by the end of this
11 year.

12 Q Nucor has been under a special contract for
13 many years?

14 A A number of years, yes.

15 Q And do you happen to know whether or not
16 their special contract then was approved I think in
17 1997, was reviewed using the criteria that was
18 established in the last Special Contract Task Force?

19 A I would have said yes until the last phrase

20 you used. It was reviewed. I'm not sure if it was
21 under the criteria approved by the last task force.

22 Q It was reviewed under a set of criteria,
23 was it not, that --

24 A That's my understanding, yes.

25 Q Okay. Did you happen to review the merger

1 order when PacifiCorp and Utah Power & Light merged
2 dealing with this issue of modifying the contracts of
3 existing special contracts?

4 A I reviewed it. It was mentioned actually
5 in someone's testimony, I think. Or a discovery
6 request or something.

7 MR. GINSBERG: This doesn't actually need
8 to be an exhibit.

9 CHAIRMAN MECHAM: We'll just use it for
10 reference.

11 MR. GINSBERG: Did you want to have this
12 marked?

13 CHAIRMAN MECHAM: We can mark it. Off the
14 record.

15 (Whereupon Exhibit Cross Examination 19
16 was marked for identification.)

17 Q (BY MR. GINSBERG) Dr. Goins, do you have
18 what's marked as Cross 19 in front of you?

19 A Is that what you handed me?

20 Q Yes.

21 A Yes.

22 Q I'd represent to you these are the certain

23 pages from the Commission's decision in the

24 PacifiCorp/Utah Power & Light merger. You indicate

25 the you did review this?

1 A I've seen this document, yes. Or seen
2 these pages.

3 Q Did you actually participate for Nucor, if
4 you look that they were a participant at that time?
5 Were you the witness at that time?

6 A Not in the retail proceeding here. I was
7 the witness in the remand proceeding before FERC.

8 Q Okay. So you were well aware of what was
9 going on in both the federal level and the state for
10 that last proceeding?

11 A I was much more aware of what was going on
12 the federal level than here.

13 Q Now, in the last proceeding, the industrial
14 customers wanted to have the contracts modified
15 because of the effect of prioritizing off-system
16 sales; is that right?

17 A That's what this claims, yes.

18 Q And at the time of the merger, there was
19 apparently, if you look on the page 81, down in the

20 last sentence, it says, In addition, the Commission
21 has another proceeding in which a task force has been
22 looking at the general issue of incentive rates.

23 So in that last proceeding, we also had a
24 task force pending similar to here?

25 CHAIRMAN MECHAM: Deja vu.

1 THE WITNESS: That's what this says. Seems
2 to always be a task force going.

3 Q (BY MR. GINSBERG) And your contracts were
4 extended, were they not, after the transaction
5 between PacifiCorp and Utah Power & Light was
6 consummated? In 1997?

7 A Yes. That's true.

8 Q Under terms that were satisfactory to
9 Nucor?

10 A Obviously. Yes.

11 Q In the last merger order, the Commission
12 chose not to alter the contracts; is that right?

13 A It -- well, the line here says The
14 Commission will not alter the contracts for
15 interruptible customers as a condition of the merger
16 by providing a higher priority than was originally
17 negotiated, signed by the parties, and approved by
18 the Commission. That's what it says.

19 Q Isn't that essentially what you're asking

20 to have happen here?

21 A Not at all.

22 Q You're asking that the Commission allow the

23 contracts to automatically be extended for some

24 period beyond their contract terms without reference

25 to the task force?

1 A Yes. And I'm asking that they -- those
2 customers be given the same protection as non-special
3 contract customers are under the stipulation. I am
4 not asking that any component in terms of pricing,
5 conditions of service, or anything else in those
6 contracts be changed.

7 This was a very simple process in that when I
8 read Lowell Alt's testimony, for example, and some of
9 the other DPU witnesses and terms were used about
10 merger savings are speculative, highly intangible,
11 very uncertain, customers placed at risk, cost of
12 capital may go up. All of these things were just
13 warning signs, red lights going on, saying conditions
14 are necessary.

15 And yet when the conditions that may be
16 necessary to protect ratepayers from these merger
17 related risks were put into effect, one group is left
18 out.

19 And I'm not concerned about what's going to

20 happen to the special contract customers while the
21 contracts exist. But the stipulation says we will
22 protect ratepayers for this four-year period. And
23 yet if a special contract customer's contract expires
24 during that four-year period, it's tough luck.
25 There's no guarantee that there will be a negotiation

1 in good faith in terms of the stipulation condition.

2 We have testimony that says if you can't
3 negotiate with ScottishPower, go back to Schedule 9
4 which for most customers -- well, at least for Nucor,
5 probably -- would be unacceptable. And that's no
6 protection at all.

7 So I just didn't see the logic. I'm saying,
8 we're going to protect everybody except this group of
9 customers who during this protective period are going
10 to have their contracts expire. It just didn't make
11 sense. Still doesn't.

12 Q Don't you see a difference, though, between
13 regular tariff customers whose only real protection
14 is the rate credit, and you're not asking the rate
15 credit be applied to you, are you?

16 A That's right. That's right.

17 Q Those same tariff customers could be
18 subjected to -- I believe they indicated they're
19 going to be filing a \$100 million rate increase in

20 the very near future.

21 A That doesn't mean they'll get a penny. We

22 don't know what they'll get.

23 Q But you can be assured that you as a

24 special contract customer are protected from that,

25 are you not? For the terms --

1 A We may be protected from that. But we may
2 have other conditions in our contracts which say our
3 costs are going to go up. I don't know by how much.
4 But they may go up. Significantly more than what the
5 Commission may even approve in a rate case.

6 If you want to take every special contract
7 and go through the terms and conditions to see what
8 actual changes are going to occur over the next four
9 years while those contracts are in effect and compare
10 them against what we don't know the Commission's
11 going to do with respect to rate increase requests, I
12 guess we could.

13 The only thing I'm asking is simply, if a
14 contract expires during this transition phase, four
15 years, not 10 years, not 20 years, during this
16 protective four-year period, if a contract expires,
17 at the customer's option, extend it for the duration
18 of the transition period. And then everyone is on
19 their own.

20 MR. GINSBERG: Thank you. No more

21 questions.

22 CHAIRMAN MECHAM: Thank you. Is there any

23 objection to the admission of Cross Examination

24 Exhibit 19?

25 MR. TINGEY: Can I ask a question?

1 CHAIRMAN MECHAM: We'll accept it. Yes, go
2 ahead.

3 (Whereupon Exhibit Cross Examination 19
4 was admitted into evidence.)

5

6 CROSS EXAMINATION

7

8 BY MR. TINGEY:

9 Q I still don't understand the answer to Mr.
10 Ginsberg's questions. So maybe we can ask it as a
11 hypothetical. What was the date Nucor's contract
12 expires? February of 2001?

13 A 2002, I think. That's my memory.

14 Q February 2002. Say between now and
15 February 2002, tariff rates go up 10 percent.
16 Should -- you talk about giving the same protections.
17 Your theory would give Nucor a renewal of the
18 contract at the same price they had today, wouldn't
19 it?

20 A Yes.

21 Q Tariff rates have gone up 10 percent?

22 A I don't think that will happen, but under

23 your hypothetical -- offset by part of this

24 \$12 million also.

25 Q Is that giving the same protections to

1 tariff customers and special contract customers?

2 Haven't special contract customers gotten better

3 protection than tariff customers?

4 A We don't know. Because just as I answered

5 to Mr. Ginsberg, we don't know what the pricing

6 conditions are or specifications within each of the

7 special contracts. They may go up next year because

8 of factors that aren't related to a rate case.

9 Q They may go up pursuant to terms in the

10 contract that they agreed to and were acceptable to

11 them, correct?

12 A That's right.

13 Q And they knew that going into it, and they

14 agreed to it?

15 A That's right.

16 Q All right. Does a tariff customer have

17 that luxury of knowing what's going to happen to

18 their prices in the next five years?

19 A They would under my rate cap, yes.

20 Q Under the proposal in this stipulation,

21 they would not, would they?

22 A No, and that's why I said the stipulation

23 was deficient.

24 Q But special contract customers would?

25 A And tariff customers would as well, under

1 my recommendation.

2 Q And the contracts, your theory is they
3 should be renewed regardless of any review as to
4 actual costs?

5 A What I said specifically is that during
6 this transition, four-year transition period, if a
7 contract expires, at the customer's option, it will
8 be renewed for the duration of the transition period
9 only.

10 Q Even if that causes a renewal at below the
11 costs of providing service?

12 A The only thing, if I can -- I don't know if
13 I can talk about -- I can't talk about Nucor's -- I
14 don't know of any special contract that is priced
15 below cost today.

16 Q Do you understand --

17 A If you can show me one, then I would agree
18 that it's a valid concern, possibly. But I don't
19 know of one.

20 Q I didn't mean to interrupt you.

21 A That's okay.

22 Q You understand other people would disagree

23 with what you said about not being priced below cost?

24 Did you --

25 A You can have an opinion. I'm sure everyone

1 can have an opinion.

2 Q Did you read Mr. Alt's testimony when Mr.

3 Dodge had a nice discussion with him about the word

4 subsidy?

5 A Mr. Alt was wrong on that score.

6 Q His opinion differs from yours

7 dramatically?

8 A He's very good, but on that one we

9 disagree.

10 Q The answer to my question, that other

11 people would disagree, is yes?

12 A Yes.

13 Q All right. And in fact, isn't that one of

14 the things the task force is looking at is how do we

15 define what these costs are?

16 A I read a memo, I guess, from Ken Powell

17 which is the basis of my answer to you, and it

18 essentially -- that was one of the factors, I think,

19 that was being looked at.

20 Q But under your proposal, we wouldn't look
21 at that; we'd just renew the contract in its current
22 price?

23 A When the contract is outside this
24 transition, the four-year protective transition
25 period, that all customers are going to be protected

1 under my recommendations, once that's over, the
2 conditions would apply as normal.

3 Q Do you think it would be prudent, using a
4 regulatory term, prudent, for ScottishPower to agree
5 to such proposal to extend contracts without any
6 opportunity to even look at whether they'd be at cost
7 or not?

8 A I think it was imprudent of ScottishPower
9 not to agree to extend these contracts before this
10 case ever began. During this transition period.

11 Q Regardless of costs?

12 A The company has made pledges and statements
13 asserting major, major cost savings. Talked about
14 its ability to work with customers. Had a chance,
15 I'm sure, to review every special contract that
16 exists.

17 And based on the things that have gone on in
18 this hearing room this week, if I had been
19 ScottishPower, I would have gone ahead, as they cut a

20 deal with the CCS, cut a deal with the DPU, I would

21 have cut a deal with the industrials as well.

22 Q Regardless of cost?

23 A I don't think they asked what the CCS's

24 cost was. I don't think they asked what the DPU's

25 clients or the group they represent or purport to

1 represent, what their costs were.

2 Q There are other criteria for approving
3 special contracts as well, such as capacity?

4 A That could be one, yes.

5 Q And you'd have these contracts be renewed
6 without even a look to see if there was capacity?

7 A In my opinion, fundamentally interruptible
8 customers don't place capacity demands on the
9 utility.

10 Q What if they're firm?

11 A Obviously, they place capacity demands.

12 Q Okay.

13 MR. TINGEY: Thanks.

14 CHAIRMAN MECHAM: Thank you. Off the
15 record a minute.

16 (Whereupon a recess was taken.)

17 CHAIRMAN MECHAM: Back on the record.

18 Commissioner White.

19 COMMISSIONER WHITE: Dr. Goins, I'm not

20 sure I understand completely your position, your
21 client's position. If special contracts customers
22 don't get the extension that they're asking for,
23 wouldn't they be -- they won't be in a better
24 position, but wouldn't they be in about the same
25 position as if there were no merger? In other words,

1 they'd have contracts expiring which they'd have to
2 renegotiate. Within the context of the task force.
3 Whatever happens there.

4 THE WITNESS: Possibly, yes.

5 COMMISSIONER WHITE: Then there's another
6 point I didn't --

7 THE WITNESS: With one exception. The
8 reality is that we have, at least in my testimony,
9 I've made the assertion that there's significant
10 merger related risk associated with this transaction.
11 The DPU and CCS both assert the same thing, which is
12 why they asked for 50 some conditions, to help
13 mitigate those risks.

14 And the client I represent would be exposed
15 to that risk without a lot of the fundamental
16 protections, in particular regarding rates as the
17 tariff customers are.

18 There's a big difference from going -- Mr.
19 Alt said if you can't cut a deal on the renegotiation

20 during this period, go back to Schedule 9. As I've
21 said, that's probably not a viable option for a lot
22 of customers.

23 COMMISSIONER WHITE: I don't know if you
24 understood what I asked. Are you saying that
25 PacifiCorp is not negotiating with its special

1 contract customers who are approaching the end of
2 their contracts?

3 THE WITNESS: I'm not saying that at all.
4 I'm saying there may come a time at which a deal
5 can't be reached. Mr. Richardson in his -- I believe
6 in one of his testimonies, the direct, talked about
7 the issue of special contracts. And there was a
8 citation from -- maybe it was in Mr. Powell's
9 testimony.

10 It had to do with how ScottishPower -- what
11 ScottishPower's attitude was with respect to
12 industrial contracts. And essentially, the bottom
13 line of it was if we are unable to reach a deal with
14 a customer, then the customer is left to its own.

15 And that testimony -- that example was given
16 specifically with regard to customers in the U.K.
17 where a customer does have the option of going to the
18 grid and buying power from an alternative supplier.
19 Unfortunately, we are not at that stage now.

20 COMMISSIONER WHITE: If the Commission did
21 impose that condition, would that alleviate your
22 client's concerns?

23 THE WITNESS: That was one of the original
24 conditions that I'd asked for, that if no one can cut
25 a reasonable deal that meets reasonable criteria

1 imposed by the Commission, then open access would be
2 an option for this transition period. Yes, that
3 would.

4 COMMISSIONER WHITE: So your reason for the
5 four-year freeze is to help ensure that your clients
6 share in the merger benefits? Protect them from some
7 of the risks, I'm sorry.

8 THE WITNESS: Yes, that's a better
9 approach.

10 COMMISSIONER WHITE: Is it also because
11 your clients, under the circumstances of the
12 uncertainty caused by a merger, feel that they need
13 more time to negotiate?

14 THE WITNESS: Well, Nucor has never
15 negotiated with ScottishPower. This is a totally new
16 entity. Nucor is certainly familiar with both the
17 Utah Power and with the post-merger PacifiCorp. This
18 is a new player coming in. And we don't know what to
19 expect.

20 COMMISSIONER WHITE: So negotiations may
21 take longer than is typical?

22 THE WITNESS: They may take longer, they
23 may be unfruitful. We just have no experience. And
24 many of the witnesses in this case have used the same
25 kind of thing. There is no track record with dealing

1 with this company. We don't know.

2 COMMISSIONER WHITE: Would it help if the
3 Commission, say, something short of the four-year
4 period but as a hypothetical here, had all the
5 existing contracts extended just for one year past
6 where they are now? Would that allow sufficient time
7 to negotiate something that may be more difficult?

8 THE WITNESS: Well, it would certainly be
9 better than no time. In Nucor's case, one extra year
10 would take us through the beginning of 2003, which
11 would be the end of the transition.

12 COMMISSIONER WHITE: When you say
13 transition, in your mind, transition to what? What's
14 on the other end?

15 THE WITNESS: I'm talking about this
16 four-year period that's included. I called it a
17 transition period. Much as this rate reduction is
18 called a merger credit. It's just the term I use for
19 it. When all of these conditions are applicable. My

20 assumption is that --

21 COMMISSIONER WHITE: Or when they've

22 expired?

23 THE WITNESS: Yes.

24 COMMISSIONER WHITE: Okay. Just one last

25 question. In your direct testimony, starting at the

1 bottom on page 9 onto the top of page 10, you said
2 that in your opinion, the Commission should consider
3 the unquantified merger benefits in its public
4 interest deliberations only if it does two things.

5 And then those two conditions are at the top
6 of page 10. One is if we accept that ScottishPower's
7 claimed corporate turnaround capabilities can be
8 transferred to PacifiCorp. What's your opinion on
9 that point after having listened to the testimony?

10 THE WITNESS: I'm not convinced. That's
11 not to say that I'm not impressed. They obviously
12 have some well-qualified people. Which, if I were
13 sitting on the board of PacifiCorp, maybe I would put
14 together a very attractive package to try to lure a
15 number of those top managers to PacifiCorp.

16 It would certainly be a lot cheaper than
17 going through this transaction. Probably even
18 cheaper than what was paid to the groups, the banking
19 groups, investment groups and investment houses,

20 actually, that reviewed this merger.

21 COMMISSIONER WHITE: And the consultants?

22 THE WITNESS: And the consultants. And the

23 lawyers, in particular.

24 COMMISSIONER WHITE: Thanks.

25 MR. MATTHEIS: I object to that one.

1 (Laughter.)

2 CHAIRMAN MECHAM: Dr. Goins, you expressed
3 a concern that there's no promise on ScottishPower's
4 part to negotiate in good faith. But I don't suppose
5 the condition that they negotiate in good faith would
6 satisfy you? I'm thinking --

7 THE WITNESS: I used the phrase in my
8 testimony, trust but verify. And I have -- based on
9 just hearing the witnesses and reading their
10 testimony and having been in this business for 25
11 years, they obviously have a lot of talent, a lot of
12 skill.

13 But when you're negotiating -- when you're
14 running a multi million dollar business, as Nucor is,
15 and you're dealing with a monopoly supplier, you have
16 to be careful. And a promise can change overnight
17 sometimes. It can be interpreted differently one day
18 from the next.

19 I'd rather see some very stringent --

20 stringent is the wrong word; concrete conditions that
21 would be imposed, and I believe those I've
22 recommended would do that.

23 CHAIRMAN MECHAM: By establishing that
24 condition, doesn't that leave parties open to come
25 and argue before the Commission what good faith

1 means?

2 THE WITNESS: Potentially, it does, I

3 guess. I don't know.

4 CHAIRMAN MECHAM: All right.

5 THE WITNESS: But one of the things that I

6 can tell you will probably happen if there is this --

7 there is not a good faith effort is that the work

8 burden of this Commission will increase 10 or 20-fold

9 as all of these contracts expire. Because you're

10 going to have the biggest employers in the state all

11 looking at significant rate increases, probably

12 major, that are going to affect the bottom line on

13 each and every one of their operations. And they'll

14 have no recourse but to come here for relief.

15 CHAIRMAN MECHAM: All right. Let's go to

16 redirect.

17 MR. MATTHEIS: No redirect, Your Honor.

18 CHAIRMAN MECHAM: All right.

19 MR. HUNTER: Can I ask one thing? It came

20 up through Mr. Ginsberg.

21

22 CROSS EXAMINATION CONTINUED

23

24 BY MR. HUNTER:

25 Q You testified for Nucor on the remand for

1 the Pacific Power and Utah Power case?

2 A Yes.

3 Q Nucor took the position it had a right to
4 become a municipal power supplier. Plymouth was
5 going to be the entity which would provide service to
6 Nucor?

7 A I think that's one of the legal arguments
8 that was made by the attorneys for Nucor at that
9 time.

10 Q Isn't that the option that Nucor took to
11 this Commission, but for justifying the special
12 contract for Nucor?

13 A The initial contract?

14 Q Yes.

15 A It may have been. I'm not sure. I don't
16 remember that order. And I don't remember that
17 filing. I don't think I participated in that case.

18 Q If you know, has Nucor changed its position
19 as to whether or not it has the right to become a

20 municipal utility?

21 A I haven't talked with Nucor's management

22 about that.

23 Q So you don't know whether or not Nucor has

24 a "but for"?

25 A If you claim that that's the "but for," I

1 haven't -- I don't have independent knowledge of
2 that.

3 Q If they do have a "but for," then the
4 Commission need not impose the kind of conditions
5 you're talking about in order to provide protection
6 for Nucor?

7 A I don't know that that's adequate or not.
8 I haven't examined it. I haven't, you know --
9 forming a municipal utility is time consuming,
10 costly, and there's just simply no reason why, with
11 the contract exploration, a special contract customer
12 shouldn't be afforded the same protection as other
13 ratepayers.

14 Q To the extent they have the "but for" that
15 they argued they had at the time of the Utah Power
16 and Pacific Power merger, they have that option, that
17 protection; isn't that accurate?

18 A Possibly. But simply because you have a
19 "but for" doesn't mean you give up your rights as a

20 customer of a franchised utility.

21 MR. HUNTER: Thank you, that's all I have.

22 CHAIRMAN MECHAM: Redirect?

23 MR. MATTHEIS: No redirect, Your Honor.

24 CHAIRMAN MECHAM: All right, thank you, Dr.

25 Goins.

1 THE WITNESS: Thank you.

2 MR. MATTHEIS: May Dr. Goins be excused?

3 CHAIRMAN MECHAM: Yes. Off the record.

4 (Whereupon a discussion was held off the
5 record.)

6 (Whereupon Exhibit Cross Examination 20
7 was marked for identification.)

8 CHAIRMAN MECHAM: Let's go back on the
9 record. While off the record, we marked as Cross
10 Exhibit 20 an FERC order that Mr. Van Nostrand
11 circulated among the parties and submitted to the
12 Commission. It's a 13-page order, and it's 87 FERC
13 61,288 I'll refer to it as, issued June 16th, 1999.
14 If there's no objection to its admission, we'll admit
15 it.

16 (Whereupon Exhibit Cross Examination 20
17 was admitted into evidence.)

18 CHAIRMAN MECHAM: Now we'll turn -- are you
19 prepared to go?

20 MR. FELL: Yes, Mr. Chairman.

21 CHAIRMAN MECHAM: All right. We'll turn to

22 argument on the motions to strike the applicants

23 filed. Mr. Fell?

24 MR. FELL: Mr. Chairman, one matter

25 beforehand. We've reached an agreement with Deseret

1 Generation and Transmission which I think moots our
2 motion with respect to their testimony. So why don't
3 we leave that one aside until we get to that
4 stipulation.

5 CHAIRMAN MECHAM: That's fine by me.

6 MR. FELL: Thank you. That would leave us
7 with the motions to strike testimony of Dr. Goins and
8 Dr. Brubaker. It might be best to take them by
9 subject matter, because they relate to the same
10 subject matters.

11 Dr. Goins was proposing that special contract
12 customers be allowed open access to the transmission
13 system, and Dr. Brubaker was recommending a regional
14 transmission organization, membership in that, which
15 has effectively the same outcome, open access to
16 power suppliers.

17 So then there's another issue that they both
18 raised which had to do with the treatment of stranded
19 costs and requested that the Commission order that

20 the applicants waive or not be entitled to stranded
21 costs as a condition for approval of the merger. I'd
22 like to take the RTO open access issue first.

23 CHAIRMAN MECHAM: Go ahead.

24 MR. FELL: First of all, we think this

25 issue is not relevant. RTOs, or regional

1 transmission organizations, are typically ordered to
2 cure market power problems, problems where in a
3 merger, the combination of the two utilities would
4 allow those utilities to exploit their transmission
5 system to gain increases in prices for the sale of
6 power.

7 There's no evidence in this record that this
8 merger creates or exacerbates market power problems,
9 and in fact, this issue was considered by the FERC in
10 its approval the merger and was -- competitive issues
11 were also considered under the Hard-Scott-Rodino
12 review, which has been cleared.

13 With that in mind, the first point is that
14 there is no evidence in the record of a harm that
15 produces an appropriate remedy of an RTO, or open
16 access.

17 The second point is that there is no RTO for
18 PacifiCorp to join. None exists. There are no terms
19 of an RTO, there is no examination of the effect of

20 an RTO on Utah customers, there is no examination --
21 for example, in the case of the independent grid
22 operator that PacifiCorp spent a year and a half
23 trying to put together, it was called IndeGO, which
24 is I-N-D-E-G-O, standing for independent grid
25 operator.

1 Those negotiations fell apart simply because
2 the parties to the negotiations had different
3 opinions about who would benefit and who would be
4 hurt. And we're talking really about the customers
5 of those utilities that would benefit or be hurt.

6 The point is that you need a much more
7 accurate record to evaluate whether to direct a
8 company to join an RTO. You need to know whether it
9 will hurt your consumers or benefit them or keep them
10 neutral.

11 Finally -- well, one other point. That is
12 that the creation of RTOs and open access is part of
13 the general restructuring investigation that goes on
14 in all the states and is going on in the state of
15 Utah to force a utility to join an RTO or create open
16 access for industrial customers when nobody knows the
17 terms of that arrangement.

18 And also, when nobody knows what the other
19 obligations are that are being created or what other

20 problems are created by the restructuring. Simply,
21 again, it's premature. There's no adequate record to
22 do that.

23 So it's impossible to gauge the harm that the
24 creation of open access might have on residential and
25 commercial consumers. And I suppose the only thing I

1 can assume is the expectation of the industrial
2 customers is that PacifiCorp would have to absorb
3 that somehow. And that's simply not the way these
4 things are done.

5 Finally, the Federal Energy Commission --
6 Energy Regulatory Commission has instituted a Notice
7 of Proposed Rulemaking on the creation of regional
8 transmission organizations. The FERC has
9 jurisdiction over all interstate transmission, both
10 the services and the tariffs that are in place. It
11 is clearly jurisdictional to that federal agency.
12 That federal agency clearly preempts state regulation
13 in that area.

14 So that is the place where it will be debated
15 no matter what. RTOs that are created will be
16 created under the guidelines established by the FERC.

17 So that it's -- I believe it's beyond the
18 jurisdiction of the Commission to actually require a
19 utility to join an RTO because it affects the issues

20 of the services that -- the interstate transmission

21 services that utility provides. It affects the

22 tariffs and the prices, the entire structure.

23 I also think that it is a bad decision for

24 Utah consumers to make a choice like that in any

25 event without knowing how such an action would affect

1 the consumers in the state of Utah.

2 So I think it is -- there's no adequate
3 record for it, I think it's not relevant to this
4 case, and I think there's federal preemption that
5 creates a major problem.

6 COMMISSIONER WHITE: As I understand it,
7 one of the criteria for being able to get a special
8 contract is that a customer could go off the system,
9 as it were. I mean, could generate his own power or
10 could get it from a municipality or something like
11 that.

12 So I agree that it would be complicated and
13 may well be under our jurisdiction, but the effect
14 would be roughly what could happen now anyway,
15 wouldn't it?

16 MR. FELL: Well, not exactly. Because
17 right now, industrial customers create this
18 alternative service option by self-generation, by
19 reducing production in some cases. Another typical

20 way, by municipalization.

21 COMMISSIONER WHITE: In any of those cases,

22 the existing utility loses their account. I mean, it

23 may still transmit power there --

24 MR. FELL: They lose the sale, that's

25 correct.

1 COMMISSIONER WHITE: Which is what would
2 happen if we were to order open access, isn't it?

3 MR. FELL: I think if you ordered open
4 access, it probably would be broader than the special
5 contract customers. It would be hard to open the
6 transmission system for just special contract
7 customers.

8 COMMISSIONER WHITE: I agree. And I did
9 point out that I recognized the complexities. But it
10 seems to me the effect is -- could be analogous.

11 MR. FELL: Yes. The effect is similar in
12 that you lose the customer, that's correct. Although
13 right now, under FERC tariffs, a retail customer
14 cannot get open access on the -- the transmission
15 system is open today for wholesale transactions, but
16 it's not open for transmission to retail customers.
17 And that's the change in FERC tariffs that is
18 associated with the creation of an RTO.

19 CHAIRMAN MECHAM: Okay.

20 MR. FELL: By the way, let me correct that.

21 You could create an RTO without giving retail access

22 to industrial customers. You could just integrate

23 the transmission.

24 CHAIRMAN MECHAM: All right. Mr. Reeder?

25 MR. REEDER: I'm involved in this debate in

1 a number of places, so let's kind of put pieces in
2 play.

3 A, the debate is usually that the Commission
4 or the state has no jurisdiction. And the state
5 usually says, I want to play. I don't want you
6 forming an RTO. An RTO is going to cost me
7 \$14 million of initiation fees and 12 cents a
8 megawatt month without my permission. I want some
9 say in the size, I want some say in the cost, and I
10 want some say in the operation.

11 So usually states are fighting the utilities
12 in most states saying, you jolly well better not
13 create a transmission organization that deprives us
14 of the opportunity to have some say in how it's
15 formed, who operates it, what's the shape of it, and
16 who has access to it. We're not going to subject our
17 people to that.

18 So states are getting into the play and had
19 to get into the play because if they don't get into

20 the play, they kind of lose their ability to protect
21 the customers from what the transmission costs can
22 be. And the costs of an ISO or RTO could be enormous
23 if you simply leave it to the operators to do it to
24 itself. Look what happened in California. How many
25 hundreds of millions of dollars that it cost to set

1 up the ISO, and what's the cost per month for its
2 operation?

3 So states are very keenly interested. And we
4 think this state needs to become very keenly
5 interested in this movement to RTO so we don't get a
6 federal system set on top of us with a whole lot of
7 costs.

8 To the issue there is no RTO, there is an ISA
9 that was filed in Nevada last week. The proposed
10 operator for that system is the California ISO.
11 California's creeping out of California to manage the
12 transmission system. The Northwest may try to block
13 it with the BPA system. They may or may not be
14 successful.

15 There are proposals for California to operate
16 the independent grid system they've proposed. Desert
17 Star may try to block it on the south. The Arizona
18 utilities think they're strong enough to keep
19 California coming out.

20 Frankly, for the cost proposals we've seen
21 for people operating ISAs, California is a contract
22 manager because they've got the software in place,
23 have the people in place, have the ability to do it
24 better than PowerEx or any others out there trying to
25 operate.

1 That's what's going on. It is the case
2 you're interconnected today in at least two ways and
3 probably three. With someone that is an ISA, that
4 will be operated by the state of California, and I
5 think we've got to get into the swing.

6 Now, the argument was there was no evidence
7 on this record that we need a regional system. There
8 was brief discussion this morning with the
9 transmission engineer. The reason you do an RTO is
10 when you've got an integrated system, your neighbors
11 can raise havoc with your system if they don't do it
12 right.

13 The things they don't do right is plan. They
14 plan to protect their native load, they don't plan to
15 allow the market to open, they plan to keep the
16 market closed. That's the reason there are
17 constraints. There are constraints so that power
18 can't flow from Washington into Nevada because the
19 Nevada utilities wanted to keep the market to

20 themselves.

21 I think if you look to bill versus buy

22 decisions of PacifiCorp, you'd find similar market

23 protection activity from Wyoming into the Pacific

24 Northwest. They won't bill, because if they don't,

25 they can keep the market to themselves.

1 I think that the load flow and the market
2 protection activities and especially the kind of
3 market protection activities that denies access to
4 lower cost power are the harms that an RTO was
5 intended to protect.

6 I know the Commission has been involved in
7 RTO discussions. FERC's been around the country
8 holding meetings and getting input saying we're going
9 to do RTOs, come in and tell us how you want it
10 shaped, what role you want to play. If you don't,
11 we're going to do it anyway, and you'll be without
12 some kind of say. So I think this is the time for
13 the Commission to begin the movement.

14 We need to be careful about what we've asked
15 here. We didn't ask for an RTO by Thursday or even
16 by the first of the year. We suggested it's a
17 process that needs to begin. It's a process that
18 needs to begin, and our concern goes because
19 PacifiCorp was the leader. PacifiCorp really was a

20 leader in RTOs in the west.

21 IndeGO was a good project. They devoted a
22 lot of good people to it and got a long way down the
23 road and their thinking is some of the best thinking
24 in developing RTOs throughout the west.

25 ScottishPower, as we know, has a different

1 attitude. But we saw that attitude in the U.K. when
2 those proposals were made in the U.K. So we've got
3 the risk of the Balkanization of the west because of
4 the introduction of a new group of control persons on
5 top of the transmission system that is not in
6 anybody's interest.

7 We've got problems we need to solve. We've
8 got a new owner that wants to Balkanize the west.
9 That's not where we should be going. We should be
10 thinking forward to the kinds of conditions we need
11 to impose to plan for the future.

12 Mr. Richardson had it right. Transaction is
13 the place where you have the opportunity to shape the
14 future. It's the only place you have to shape the
15 future for the parties in the matter. You've got to
16 take them or you may be without the opportunities,
17 because the next time they argue you don't have
18 jurisdiction, you won't have a way to get
19 jurisdiction.

20 A couple of other points we need to make.
21 Remember, the U.K. imposed on this transaction
22 separation of the generation assets from the
23 transmission assets. And it wasn't long ago that the
24 ink on the bill in Oregon dried requiring some kind
25 of separation.

1 So the likelihood that it will occur because
2 events around us or not to occur because of events
3 around us given Oregon is pretty high. We need to
4 keep that on the radar screen.

5 The issue of the special share. Special
6 share really can lead to this company, these new
7 owners, acting as a barrier to the development of an
8 RTO.

9 PacifiCorp's systems is one of the largest
10 systems in the west. They and the BPA control the
11 transmission in the west. If the Scottish government
12 chooses to say no, who have we got in control of
13 deciding what's the most efficient system in the
14 west? We suddenly become incapable of regionalizing
15 because of control outside of our boundaries? I'm
16 not sure that would be in the public interest.

17 That's the reason we suggest you use your
18 conditioning authority in this matter to approach it.
19 We think you ought to hear the evidence. We think

20 you ought to hear the evidence before you decide what

21 the correct thing to do is.

22 And we think in your order, after you hear

23 the evidence, that you ought to make a condition.

24 Maybe you want to make findings and set a course and

25 set another docket and proceed. But it's not a topic

1 we can ignore, and it's time to assure yourself
2 you've got the ability to deal with, you don't have
3 any jurisdiction when it comes time for you to get in
4 the game.

5 CHAIRMAN MECHAM: We could agree with
6 almost everything you said, let's say,
7 hypothetically, and still reach the conclusion that
8 it isn't necessary to condition the merger on those
9 things given the activity in the Legislature.

10 And to the degree that there's a question of
11 jurisdiction, if there's a law mandating certain
12 things, the state clearly has jurisdiction over a
13 number of things affecting utilities and how utility
14 service is provided within its boundaries.

15 It seems to me that even if we do nothing, we
16 haven't lost the opportunity if the movement is
17 forward in that direction.

18 MR. REEDER: A couple of observations.
19 Even if you choose not to make a condition, you

20 should make some findings about where this issue is
21 and what needs to be done. You've got a fairly
22 decent record in front of you. It's not something
23 that ought to be ignored in the order. We hope you
24 exercise your authority to maintain jurisdiction.

25 Secondly, Mr. Fells is right, there's an

1 issue about whether or not you can order someone to
2 provide a service when that service is subject to the
3 exclusive jurisdiction of a third party. In the
4 absence of their consent, and this is the enforcing
5 problem, in the absence of their consent to bring
6 them here, you've got a problem of never seeing it
7 again. Because you may not, he's right, you may not
8 have the authority to independently order.

9 So if you don't have a merger condition that
10 says I want to see it when you file it, whatever
11 fashion it is, and this is the timetable I want to
12 see it in, you may never have that chance again. You
13 may not independently have the authority to do that
14 outside of a merger condition.

15 It's a difference in a contract and public
16 law. You can make private law in the contract that
17 is the merger conditions. Because there may not be
18 adequate public law for you to get there.

19 Secondly, losing it. All of the proposals

20 before Congress today, thank God, have grandfather
21 provisions that preserve the rights that states have
22 in their restructuring programs and in their
23 transmission programs. To protect what they have
24 done in Wisconsin, California, PMG, and in the
25 Midwest. The grandfathering provision that protected

1 what we've done wouldn't give us very much help if
2 we've done nothing.

3 CHAIRMAN MECHAM: Of course, the Oregon
4 statute passed, and Oregon hasn't ruled on the merger
5 yet, but they're moving forward legislatively. With
6 the Commission doing all the work, as I read that
7 bill.

8 MR. REEDER: I'm afraid that's the way
9 these deals happen. The Legislature sets the policy,
10 you do the work. I'm sorry to report, but having
11 been there a couple of times, I know where the work
12 has to be done. But that's appropriate. You've got
13 the ability to hear witnesses, make findings of fact
14 and reach conclusions.

15 CHAIRMAN MECHAM: All I'm saying is that
16 with or without the merger or with or without
17 conditions on the merger, the Oregon Commission under
18 that law is now going to go forward based on the
19 provisions of that law, and they'll address all the

20 issues you're talking about.

21 MR. REEDER: Absolutely. Unfortunately,

22 you're handicapped because you don't have a

23 legislature that's giving you policy direction or

24 statute to operate under. You're absolutely right.

25 You're dealing with the analog of the 1889 Interstate

1 Commerce Act in regulating electric utilities in
2 1999. It's unfortunate that that's a toolbox that
3 you've got, but that's really the analog that we've
4 got. I think it's a convenience of necessity, rate
5 of return regulation, all of those things are here.

6 I'm not suggesting that we need to get in
7 front of the Legislature. It's probably
8 inappropriate for us to do that. But it is not
9 inappropriate for us when we've got the opportunity
10 to preserve our right to do what needs to be done in
11 the future to put our hook in so that we've got the
12 ability to say, before you file these things, we want
13 to see them and we want you to file them by these
14 dates.

15 I don't think you can get into the terms and
16 conditions. Mr. Fells is right, you can't get into
17 the terms and conditions. You probably can't get
18 into the prices. You can have some control and sway
19 over the size and shape and who manages it. Say,

20 over whether California manages it or not. I think
21 you ought to. We ought not to have to fight that
22 battle all at FERC.

23 CHAIRMAN MECHAM: Mr. Mattheis?

24 MR. MATTHEIS: Briefly, thank you.

25 Speaking broadly, we have to be careful to contrast

1 the issues and remedies. I think issues are
2 appropriate for motions to strike, motions to strike
3 on ground of relevance. It's not an issue in this
4 proceeding, it's remedies parties have proposed.

5 Both Drs. Goins and Brubaker identified, are
6 ratepayers being protected from risk, are they
7 receiving appropriate benefits? They proposed a
8 number of remedies as they saw fit. The applicants
9 are attempting to keep those remedies from being on
10 your desk.

11 I think the Commission needs the authority to
12 look at all the remedies proposed. You certainly
13 have the power and authority to reject it as you see
14 fit for whatever reasons.

15 But all we're talking about here is limiting
16 your authority to look at possible remedies. And I
17 don't think that's appropriate for a motion to strike
18 on relevancy grounds.

19 CHAIRMAN MECHAM: Okay, thank you. Mr.

20 Fell, anything?

21 MR. FELL: I would like to correct some
22 facts that you've heard. First of all, the special
23 share does not deal with the sale of assets. The
24 special share deals with the control, or rather a
25 level, a specified level of control of ScottishPower

1 shares. So the special share does not interfere with
2 the matter of the -- the local matters of regulating
3 and operating this utility.

4 Second, the U.K. did not require separation
5 of transmission assets. They required separation of
6 generation assets. So the transmission assets of
7 ScottishPower are not separated.

8 Next, PacifiCorp obviously is a major
9 transmission owner, and also a major generation owner
10 and major player in wholesale markets in the west.
11 PacifiCorp has generation in Wyoming, Utah, in the
12 state of Washington right now, although that's up for
13 sale. But also has contracted with BPA.

14 PacifiCorp has generation requirements that
15 require transmission all over the western United
16 States and is a major -- PacifiCorp is a major seller
17 into the southwest markets.

18 So PacifiCorp has every interest, no matter
19 who owns PacifiCorp, in pursuing rational regional

20 transmission organizations that are beneficial to its
21 customers. It certainly doesn't want to get into one
22 that's harmful.

23 Next, with regard to reliability, the control
24 area operators and reliability councils in the
25 northwest and throughout the west coordinate very

1 closely and are always meeting to take care of
2 reliability issues. RTOs are not reliability issues,
3 they're operational issues. In terms of setting
4 rules, terms and conditions for access to the system
5 and prices for the use of the system.

6 So I think in the end, what I'm saying is
7 there's no question ScottishPower and PacifiCorp will
8 be actively involved in that and will be constructive
9 players in whatever is done, but they must do it with
10 an eye toward the benefits to its customers and
11 protection of its customers and coordination with
12 state Commissions.

13 Finally, I guess on FERC jurisdiction,
14 PacifiCorp can't waive for jurisdiction. This isn't
15 something -- there's a difference here between what
16 we talked about on the SEC jurisdiction on affiliate
17 rules. They're -- the SEC under PUHCA has allowed
18 states to -- allowed holding companies to defer to
19 state jurisdiction on the affiliate rules, and the

20 SEC cooperates with that.

21 But on FERC jurisdiction over transmission

22 services and price, there is no ability of any

23 transmission owner to waive that authority.

24 COMMISSIONER WHITE: Do you think it would

25 be proper for this Commission to ask ScottishPower to

1 consult with us before filing comments with FERC so
2 we could maybe discuss their position before filing?

3 MR. FELL: I think they would be pleased to
4 do that. I don't think that would be a problem.

5 CHAIRMAN MECHAM: Mr. Reeder?

6 MR. REEDER: Were it not for the merger
7 order in Nevada, the Nevada Commission would have no
8 say over who was going to operate that ISA. Whether
9 it be the State of California or some independent
10 operator. It is only a merger condition that left
11 the Nevada Commission with the authority to have any
12 say over who that operator was going to be.

13 You've got the opportunity to preserve for
14 yourself that kind of opportunity here, and you ought
15 to hear the evidence before you go without. Because
16 if you don't, these guys could never have to darken
17 your doorway again with RTO kinds of filings or
18 proposals.

19 COMMISSIONER WHITE: You'll be arguing we

20 should turn our transmission system over to

21 California to operate?

22 MR. REEDER: I'm arguing that it needs to

23 be operated by the most efficient kind of operator,

24 and I would have to go to FERC to make that argument.

25 And you will have no say in the outcome, save

1 intervening at FERC. And I think it's more
2 convenient for us to argue it in Salt Lake City in
3 front of you over who the best operator is than for
4 you and I to both be a party in front of FERC having
5 that argument.

6 COMMISSIONER WHITE: No matter what we do,
7 can't FERC preempt this Commission?

8 MR. REEDER: They can with respect to the
9 rates, to the terms. They may preempt you if we
10 don't get in the game soon with respect to the
11 geographical reach of it. I'm not sure they can
12 preempt you with respect to who might be the
13 operator.

14 CHAIRMAN MECHAM: Mr. Fell, what else do
15 you want to argue? Anything?

16 MR. FELL: We rest.

17 CHAIRMAN MECHAM: Okay.

18 MR. FELL: The other issue is the stranded
19 cost issue.

20 CHAIRMAN MECHAM: That's what I mean. I

21 liked your other statement.

22 (Laughter.)

23 CHAIRMAN MECHAM: Let's see if we can't

24 boil this down in a couple of minutes.

25 MR. FELL: All right. On the stranded cost

1 issue, we have two points on that. One is that the
2 term "stranded cost" refers to the costs of resources
3 that cannot be recovered in a competitive market.

4 The argument that has been made is that
5 because the share price in this exchange is higher
6 than the net book value of the assets, that
7 therefore, there's the leap of logic there,
8 therefore, PacifiCorp cannot have stranded costs.

9 And that is simply not true.

10 The comparison isn't that comparison. It's
11 between the cost of the assets and the market price
12 of power. Neither one of those, neither the cost of
13 assets nor the market price of power, is affected by
14 this transaction.

15 Cost of the assets, the net book value of the
16 assets remains the same. The market price of power
17 is set by the market. So neither of the
18 characteristics of stranded costs is affected by this
19 merger or can be.

20 Second, the market price of power, or rather
21 the market price of PacifiCorp stock, was higher than
22 the net book value of its assets before this
23 transaction. And it's -- a little bit after the
24 transaction, it will be a little more higher. If I
25 can use a double on that. It's only a matter of

1 degree. It's not a matter of crossing over a line.
2 So there's nothing that's going on there in
3 connection with the merger that actually crosses the
4 threshold on this.

5 COMMISSIONER WHITE: But cost of the assets
6 aside, doesn't the merger price in some sense reflect
7 someone's judgment of the value of those assets?

8 MR. FELL: The answer I give on that, if
9 one were to take a look at transactions like this
10 across the country, one would find -- first of all,
11 one would find that across the country, there might
12 be only a couple of utilities where their share price
13 is below the net book value.

14 If the share price is below net book value,
15 that is very unusual and very worrisome. So you
16 can -- that would basically say there is no stranded
17 cost throughout the country, which would say the
18 competition is foolish.

19 So it all defies logic is what I'm saying.

20 We know there's stranded cost in some parts of this
21 country. Yet if you look at the share prices in
22 those areas, you'll see that it doesn't support this
23 theory at all.

24 COMMISSIONER WHITE: You're simply saying

25 you don't want to argue the stranded cost issue in

1 this case, that you think it's more appropriately
2 done in another context?

3 MR. FELL: That's correct. That is
4 absolutely correct. It is also a fact that stranded
5 cost determinations are made in connection with
6 restructuring. And that in those restructuring
7 debates which are taken up at the Legislature, the
8 entire kind of system is evaluated as to what changes
9 will be made.

10 And those -- that those determinations
11 affect -- in some degree affect how much stranded
12 costs there might be and maybe whether they're
13 stranded costs. So the way the Legislature sets it
14 up will have an effect on the outcome.

15 Another point is that the whole stranded cost
16 argument comes up under the notion that if the
17 government takes somebody who has a duty to serve and
18 vested money under a duty to serve and changes that
19 market so they're now subject to competition, that

20 strands costs and it trips into the Constitutional
21 protection against government taking property without
22 just compensation.
23 It's a Constitutional issue. It's a
24 Constitutional protection that's at stake. And with
25 regard to the Legislature, what they're asking us to

1 do here is waive our right to go to the Legislature
2 and participate in the process of restructuring and
3 determining how stranded costs might be involved in
4 that.

5 And that's a waiver of our right to
6 participate in legislative processes. It's a waiver
7 of our right to petition the Legislature for redress,
8 which is a fundamental right which we won from King
9 George, and they're trying to turn it around now and
10 stick the Scots with the same thing we did --

11 MR. REEDER: How many times do we do this
12 war?

13 MR. FELL: This goes back to the Founding
14 Fathers and troubled Americans in the first place.
15 PacifiCorp has a right to participate in the
16 legislative process on restructuring and stranded
17 costs, and this condition, if you read what they ask,
18 denies them that right.

19 CHAIRMAN MECHAM: All right. Mr. Reeder.

20 MR. REEDER: Thank you. Pardon me, but
21 I'll bet you've heard this more than once. The
22 theory of stranded costs usually arises and is
23 founded on some argument that there is a regulatory
24 compact. You've heard it again.
25 It usually goes that we had a duty to serve

1 and make these investments and, ergo, we have the
2 right to receive money. And you heard it again.

3 And it usually goes that our assets, when
4 exposed to competition, become of lesser value when
5 we're entitled to be made whole because we were not
6 to be exposed to competition. And you heard it
7 again.

8 The argument then seems to depart from it
9 today. They say that's because the value is
10 determined on market value, and there's no evidence
11 on market value here. But that then kind of departs
12 from the literature and practice on stranded costs.

13 Stranded costs in California were determined
14 by transactions. They sold the damn things.
15 Determined what the price was based on actual
16 transactions. Didn't have to guess about market
17 value. You had an actual transaction.

18 In many cases, we're determining stranded
19 costs by comparison with similar transactions. Units

20 been sold, have those units fetched in excess of book

21 value? Where they have, that's a legitimate way for

22 determining market value, value of the asset.

23 A third way for determining value of the

24 asset is to do some net present value future income

25 stream, then you've got to do market value.

1 So only one of three circumstances have we
2 got to do that to know what stranded costs were. So
3 the mystery we don't know what market value is, the
4 argument is simply swimming in errors. We can
5 determine stranded costs, do it every day, without
6 having to know what the market value of the asset is.

7 We've got in this case a couple of
8 interesting kinds of circumstances. Number one, the
9 premium. If nothing else, this Commission must find
10 that there can never be an expectation to cover the
11 premium, \$1.6 billion, as a stranded cost. We must
12 disabuse them of that notion.

13 Secondly, this Commission must find and
14 should order, under all sets of circumstances, that
15 they're not entitled to recover stranded costs for
16 the \$250 million paid to Salomon Smith Barney, Morgan
17 Stanley, and, yes, to the lawyers -- it should never
18 come back as stranded costs in any fashion. Sorry,
19 but that's not the way it ought to be.

20 We ought to resolve at minimum those issues,
21 which leaves only the original issue that PacifiCorp
22 had if it had a claim for stranded costs.

23 The evidence in this case thus far is that
24 the transaction in this case values those assets at a
25 range of 1.4 to 1.8 times their book value. That's

1 the value implicit in the value the shareholders are
2 getting.

3 That puts us in an unusual situation. I'm
4 surprised these guys are actually complaining. Most
5 times the complaint about stranded costs comes,
6 you're exposing my assets to competition and we're
7 going to lose value, so I need to get my money when
8 my assets lose value.

9 Here, they're getting their money and they're
10 not going to suffer the loss for two, three or four
11 years, however long it takes the Legislature to give
12 this Commission the guidance it needs to move on to
13 the next stage of the electric industry.

14 The shareholders are getting their money
15 today and suffering their loss later, and they're
16 complaining about us saying, you should only be paid
17 once. They've been paid and been paid handsomely,
18 concededly in the value of ScottishPower shares, but
19 how many times do they have to pay?

20 We suggest you need to address that historic
21 PacifiCorp remainder of the stranded cost document.
22 You need to address it and leave it absolutely clear
23 that they cannot come into this state, being persons,
24 quoting my new best friend Mr. Richardson, knowing
25 that, A, base competition here in the near term, B,

1 what competition will do to them, and knowing those
2 things, have any expectation that they're going to be
3 protected by super values on their assets from that
4 exposure.

5 There are known facts. We ought to end the
6 debate. They know what's going to happen. That
7 making that investment, paying those premiums, in
8 full light of that knowledge. They ought to be
9 charged with that knowledge and ought to be held to
10 that knowledge so they can't come back and make a
11 stranded cost claim having that knowledge.

12 The stuff about a regulatory compact ought to
13 go out the door. Actual knowledge about what they
14 face ought to occur. The FERC order in '88 said look
15 back two years. You knew it was coming in two years.
16 Any contract that predated 1994 was entitled to
17 stranded cost treatment. Anybody after 1994 didn't
18 get stranded cost treatment. That's what happened.

19 And now to the Constitutional argument. The

20 United States Supreme Court has already said, Market
21 Street Railroad in San Francisco, many years ago, the
22 exposure of assets to competition is not a taking.
23 What they've got is a license given by you to be near
24 the exclusive provider. The loss of that license
25 given by you isn't a taking.

1 The Utah Supreme Court said numerous cases,
2 you can give and you can take away. And when you can
3 give and you can take away, that isn't a property
4 right that arises to the level of taking. And the
5 court's already spoken to that issue.

6 That's not to say you won't hear it again.
7 That's the reason we suggest that you can end the
8 debate. Because as you can tell, we've had this
9 debate in a lot of places a lot of times.

10 CHAIRMAN MECHAM: Thank you. You make us
11 sound like deity.

12 (Laughter.)

13 CHAIRMAN MECHAM: Mr. Mattheis?

14 MR. MATTHEIS: I'd like to reiterate, and I
15 won't be long, that I think it's inappropriate to
16 strike remedies on relevance grounds. I think if any
17 witness in this proceeding that wants to propose a
18 remedy to protect the public interest and ensure that
19 this merger assess the public interest standard ought

20 to be entitled to do so. It ought to be their right
21 to put forth remedies. You ought to be entitled to
22 hear them.

23 I do not think it's appropriate to strike
24 remedies on relevance grounds. That's why we strike
25 issues. We can argue which remedies are good, bad,

1 why they would or wouldn't work, might or might not
2 be appropriate. I think that's what briefs are for
3 and not motions to strike.

4 CHAIRMAN MECHAM: Thank you. Do you rest,
5 Mr. Fell?

6 MR. FELL: I just want to make clear that
7 ScottishPower has agreed, we will not include the
8 acquisition premium or transaction costs in rates
9 through stranded costs or otherwise. So I don't want
10 there to be any confusion about that.

11 And the other thing is that this other way of
12 determining stranded costs through actual
13 transactions such as sales, that will happen. And
14 we're not arguing about that.

15 We're arguing about not having a right to
16 ever argue about anything again. Or even go to the
17 Legislature and participate in the restructuring
18 process.

19 COMMISSIONER WHITE: To the extent this is

20 in briefs, it seems to me the issue isn't on the
21 substantive debate over stranded costs, it's whether
22 this forum and proceeding is the best place to
23 address it. Then we get to go to the substantive
24 issues.

25 MR. REEDER: Precisely.

1 MR. FELL: That is correct. Mr. Mattheis
2 is correct. We are seeking to strike proposed
3 remedies. I'm not sure that makes a difference one
4 way or the other, but that is what we're trying to
5 do.

6 CHAIRMAN MECHAM: All right. Understood.
7 If there's nothing further, we'll take those issues
8 under advisement. We will finish for the evening and
9 see one another at 9:00 tomorrow morning for Public
10 Witness Day to begin with. Thank you.

11 (Whereupon the proceedings were
12 adjourned at 5:38 p.m.)

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