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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp and Scottish Power plc for an Order Approving the Issuance of PacifiCorp Common Stock.	**DOCKET NO. 98-2035-04**

POST-HEARING BRIEF
OF APPLICANTS
SCOTTISH POWER PLC AND PACIFICORP

TABLE OF CONTENTS

Scottish Power plc ("ScottishPower") and PacifiCorp (together, "Applicants"), respectively submit this Post-Hearing Brief pursuant to the schedule established by the Public Service Commission of Utah ("Commission") in this docket.

INTRODUCTION

The record in this case establishes that the Application of PacifiCorp and Scottish Power plc for an Order Approving the Issuance of PacifiCorp Common Stock ("Application"), pursuant to Utah Code Ann. § 54-4-31 will be in the public interest and should be approved by the Commission. Through four separate stipulations with various parties, and a letter agreement with two parties, Applicants have made substantial commitments for the benefit of PacifiCorp's customers and employees in Utah, including a four-year merger credit totaling $48 million, new cost-savings initiatives, system performance and customer service improvements, low-income assistance, charitable contributions, community initiatives, commitments to employees, commitments to Utah, increased investments in renewable resources, conservation, and other environmental commitments. ScottishPower will maintain Utah Power & Light Division headquarters in Utah and will relocate a senior executive to take up residence in Utah with broad influence over the utility's operation in Utah including involvement in economic development and corporate citizenship activities. The myriad of terms and conditions set forth in the stipulations ensure that Applicants will deliver these benefits and that customers will be benefitted, not harmed, by the transaction.

The Application in this case was filed on December 31, 1998. Seven months and four Stipulations and a letter agreement later, the only active opponents to the Application are: the

Utah Industrial Energy Consumers ("UIEC"), the Large Customer Group and Nucor Steel (collectively "Industrial Customers"). The Industrial Customers failed to raise any issues that are sufficient to justify the Commission's rejecting the Application or imposing any conditions beyond those already agreed to by the Applicants.

In addition, the Utah League of Cities and Towns ("League") asked that certain conditions be required of the Applicants in connection with approval of the merger and Magnesium Corporation of America ("Magcorp") requested that as a condition of the merger that it be decertified from the ScottishPower/PacifiCorp service area upon the termination of its special contract.

For all the reasons stated below, Applicants respectfully request that the Commission approve the Application with the conditions agreed to by the Applicants.

ARGUMENT

I. STANDARD FOR APPROVAL OF THE APPLICATION

The Commission's task in this proceeding is to determine whether the ScottishPower/PacifiCorp transaction is in "the public interest" pursuant to Utah Code Ann. § 54-4-31. The Commission has previously interpreted this statutory language to mean that a transaction must meet a net "positive benefit" standard for the Commission to approve it. See CP National Corp., Case No. 80-023-01, Utah Power & Light Co./PacifiCorp, Case No. 87-035-27. Applicants believe the statute only requires a "no harm" standard. However, the DPU, the CCS and the Applicants all agree that the evidence shows that the Applicants meet the higher net benefit standards and that the ScottishPower/PacifiCorp transaction is in the public interest.

II. NET BENEFITS WILL RESULT FROM THE TRANSACTION

Based upon the range of commitments Applicants have made in the four stipulations and the letter agreement reached in this proceeding, it is abundantly clear that net benefits for PacifiCorp's Utah customers will result from approval of this transaction. These benefits are categorized and discussed below.

A. Merger Credit

The Division of Public Utilities ("DPU"), the Committee of Consumer Services ("CCS"), ScottishPower and PacifiCorp, entered into a stipulation dated July 28, 1999, Joint Exhibit No. 1 (the "Stipulation"). Condition 43 of the Stipulation sets forth Applicants' commitment to provide a merger credit to customers for a four-year period, from 2000 through 2003. The merger credit consists of $12 million per year for four years. Applicants have the ability to offset the credit for the third and the fourth years by filing a rate case to the extent that this filing reflects merger-related cost savings. Even if Applicants offset the merger credit with cost savings in the third or fourth year, those savings will be reflected in customer rates and therefore would be lower than they would have been absent the merger. (Hearing Transcript ("Tr.") 869.) The $48 million merger credit is therefore guaranteed to the Utah tariff ratepayers for the entire four-year period.

B. Ability to Pass Additional Cost Savings Through to Customers

Based upon its track record of transforming utility companies in the U.K., ScottishPower will achieve cost savings in the operations of PacifiCorp beyond that which PacifiCorp could achieve on a standalone basis. (SP Exhibit 4, pages 4-6, Tr. 869-870.) ScottishPower's intention to achieve cost savings in PacifiCorp is a direct benefit of the merger, because PacifiCorp has no specific plans to achieve any additional cost savings. (PacifiCorp Exhibit 1R, page 4, Tr. 672.)

Cost savings will be identified in the transition plan which the Applicants will file with the Commission six months after closing of the transaction which will enable the Commission to clearly see what cost saving initiatives will be implemented by ScottishPower as a result of this merger. (Stipulation, Condition 13.) In addition, to ensure that the increased potential for cost savings is a concrete merger benefit, Applicants agreed to Condition 43 of the Stipulation; the merger credit is therefore essentially a down-payment on expected merger savings.

C. Improvements in Network Performance and Customer Service

1. Network Performance

The Applicants have voluntarily committed to provide the most comprehensive set of performance standards and customer guarantees for any U.S. electric utility. (SP Exhibit 2, page 19, Tr. 1483.)

System performance will be improved by reducing the System Average Interruption Duration Index (“SAIDI”) in Utah by 10% by 2005, reducing the System Average Interruption Frequency Index (“SAIFI”) in Utah by 10% by 2005 and reducing the Momentary Average Interruption Frequency Index (“MAIFI”) in Utah by 5% over the same time period. Additionally, PacifiCorp will identify the five worst performing circuits in Utah in each year, and will take corrective measures within two years of identification of those circuits to make a 20% improvement in each such circuit. For power outages because of a fault or damage on PacifiCorp’s system, Applicants will restore supplies on average to 80% of customers within three hours. (SP Exhibit 2. pages 3-4, Joint Exhibit Attachment No. 1.)

The evidence also shows that ScottishPower will bring important experience to its effort to increase service quality and system performance and achieve these standards. In the U.K., ScottishPower has achieved high levels of customer satisfaction at Manweb and Southern Water, and has dramatically improved the quality of service and system performance in those companies, following their acquisition by ScottishPower. (SP Exhibit 2, pages 17-19.)

While the value of increases in service quality is difficult to identify in dollars, their value is nevertheless substantial. ScottishPower has estimated that these planned improvements will have a dollar value of approximately $61 million annually and up to $600 million on a net present value basis. (SP Exhibit 1S, page 5.) This value is underpinned by other studies which range from $31 million to $61 million, with the lower value excluding large customers within the study base. (SP Exhibit 3R.2, Tr. 821.) We expect Utah benefits will approximate $20 million per year. (Tr. 1483.) DPU witness, Robert Maloney, stated that the $60 million benefit from improvement of system performance was understated and the value did not account for secondary economic impacts or customers of companies affected by power outages. Moreover, this calculation covered the three network performance standards, SAIDI, SAIFI and MAIFI, and did not account for the additional benefits associated with the entire package of performance standards and customer guarantees. (Tr. 1455-1456.)

ScottishPower has committed that in the event that it fails to meet its targets for increasing performance on the network in Utah, it will pay $1 for each of its customers in Utah. These funds would be returned to the community as determined by the Commission. (SP Exhibit 2, page 9.) This is a commitment that is without precedent in Utah.

2. Customer Service

ScottishPower witness Bob Moir discussed in detail ScottishPower's plans for improving and focusing upon customer service. (SP Exhibit 2, pages 3-5.) ScottishPower will focus its efforts on a number of areas that have been demonstrated to be of particular concern to consumers, and will increase its quality of service in each of those areas and has made eight guaranteed commitments to customers in this regard. ScottishPower will reduce the time to answer telephone calls to PacifiCorp's business centers, and will shorten the time necessary to resolve customer complaints received through the Commission. ScottishPower will make guarantees to individual customers regarding restoration of power supply, kept appointments, service installation, response to bill inquiries, clarification of planned interruptions and handling of power quality complaints. Guarantees will also be extended regarding estimates for installations of new service. As to each of these guarantees, ScottishPower will make payments of $50 or $100, depending upon whether the customer is residential or commercial, directly to individual customers for each failure to meet these guarantees. (SP Exhibit 2, pages 14-15.)

ScottishPower's willingness to voluntarily make guarantees backed by payments to individual customers in the event of failure of the company to meet those guarantees gives unique evidence of the strong commitment of ScottishPower to the customers it serves.

It is noteworthy that, in contrast to the detailed and comprehensive commitment made by ScottishPower to improvements in customer service and system performance, PacifiCorp has no plan for improvements to be undertaken on its own. (PacifiCorp Exhibit 1, pages 7-9 and PacifiCorp Exhibit 1R, page 5.) Without evidence of such plans, the value of ScottishPower's commitment cannot fairly be diminished on speculation that PacifiCorp might have achieved some of the same improvements on its own. Also, ScottishPower's experience means greater deliverability.

Improvements in customer service to which ScottishPower has committed have real value to customers, and should be given considerable weight by this Commission in its decision whether to approve the proposed merger. Such improvements clearly increase the adequacy and efficiency of the utility service and benefit the comfort and convenience of the company’s customers.

ScottishPower estimates that it will spend approximately $55 million during the five year implementation for its proposed service standards package. ScottishPower has committed that the $55 million investment in improvements to customer service and system performance will come from the redirection of existing budgets and savings in other areas such that there will be no new incremental cost to ratepayers for the program. (SP Exhibit 1S, page 8.) In any event, these costs will not be passed on to ratepayers unless the Commission determines in a rate proceeding that they have been prudently incurred. (Tr. 864.)

D. Commitments to Communities

1. Low-Income Customers

ScottishPower has made a number of commitments to the communities that PacifiCorp serves, which Applicants believe will deliver merger benefits to PacifiCorp's Utah customers. A number of these have been memorialized in the Stipulation and Settlement of Issues Related to Low-Income Customers (“Low-Income Stipulation”). (SP Exhibit No. 8.)

The Low-Income Stipulation was entered into by ScottishPower, PacifiCorp, the Salt Lake Community Action Program and the Crossroads Urban Center. In the Low-Income Stipulation, Applicants have agreed to support the implementation of a lifeline rate in the Utah jurisdiction to be funded by ratepayers and to support extension of the lifeline rate in Utah to provide additional discounts to the disabled and other vulnerable customers. PacifiCorp/ScottishPower are committed to working with the appropriate partners (as ScottishPower has successfully done in the U.K.) to identify innovative, cost-effective programs that provide sustained benefit to low-income customers through decreasing energy usage and improving their ability to pay current and past electric bills. The Applicants also committed to fund low-income initiatives in Utah, with shareholder funds, for three years at a level of $300,000 over and above what was spent by PacifiCorp on similar programs in the State of Utah in 1998. The parties to the Low-Income Stipulation agreed that its provisions are in the public interest and beneficial to PacifiCorp's Utah customers. (Low Income Stipulation, page 1, SP Exhibit 8.)

2. Charitable Contributions

ScottishPower has also made a commitment to contribute $5 million, funded by shareholders, to the PacifiCorp Foundation upon completion of the transaction. In addition, ScottishPower will maintain the existing level of PacifiCorp's other community-related contributions, both in terms of monetary and in-kind contributions. (SP Exhibit 1, page 11, lines 19-23.)

3. Commitments to Employees

ScottishPower has committed to honor PacifiCorp's existing labor agreements. (SP Exhibit 1, page 16, lines 13-19.) ScottishPower will promote and support access to life-long learning for its employees through its Open Learning network, similar to its U.K. programs, and has committed to develop high quality training facilities for PacifiCorp's employees, and will locate one of those facilities in Utah. (SP Exhibit 6, page 4, lines 12-18.) ScottishPower will also develop other training and educational opportunities for employees and, ultimately, their families and communities. (SP Exhibit 6, page 4, lines 19-26.) The Applicants have also agreed to comply with the provisions of the Merger Agreement in respect of employee benefit plans. (Joint Exhibit No. 1, Condition 42.)

4. Community Learning

ScottishPower has made additional commitments to deliver ongoing educational and training opportunities to the communities PacifiCorp serves. ScottishPower will develop a "School to Work" initiative, similar to programs it has successfully developed in the U.K. ScottishPower also intends, through time, to provide community access to the Open Learning network. Skill development opportunities will be made available through the Open Learning Centers, work experience mentoring, and work shadowing. (SP Exhibit 6, page 9, lines 15-22.)

5. Commitment to Utah

ScottishPower has had detailed discussions with the Department of Community and Economic Development ("DCED") and the Division of Business and Economic Development ("DBED") in Utah and by letter agreement with them, has committed to locate a senior executive to take up residence in Utah. The executive will report directly to the CEO of PacifiCorp and this person will have broad influence over PacifiCorp's operation in Utah including, but not limited to, authority to approve corporate involvement in economic development and corporate citizenship activities. The other commitments include, inter alia, a commitment that Utah Power & Light Division headquarters will be located in Utah and that ScottishPower will work to assure that Utah is treated fairly and equitably across the service territories of PacifiCorp in respect of employees, resources, training, foundation gifts, corporate representation and economic development. (SP Exhibit 1R.1.)

E. Environmental Commitments

ScottishPower has made a number of important commitments to the environment which are incorporated in the Stipulation and Settlement of Issues related to Public Purpose Program between PacifiCorp, ScottishPower, the Office of Energy and Resource Planning, and the Land and Water Fund of the Rockies. (SP Exhibit 7.)

1. Integrated Resource Planning

ScottishPower and PacifiCorp commit to produce Integrated Resource Plans every two years according to the current schedule and the then current Commission rules. (SP Exhibit 7, page 3, Joint Exhibit No. 1, Condition 40.)

2. Renewable Resources

Applicants have committed to develop or acquire an additional 50 MW of system-wide renewable resources. ScottishPower/PacifiCorp will use the Integrated Resource Planning process to evaluate renewable resources and work with interested parties including the Energy Efficiency and Renewable Energy Task Force in designing, developing, implementing and evaluating specific programs to most effectively deploy renewable energy technology in Utah. (SP Exhibit 7, pages 3-4.) PacifiCorp shall make a showing in a rate proceeding that the addition of those renewable resources to the rate base for the revenue requirement first appearing in that rate proceeding are prudent investments. (Joint Exhibit 1, Condition 41.)

Applicants have also committed to file a "green resource" tariff within 60 days after completion of the transaction. (SP Exhibit 7, pages 3-4.)

3. Conservation and Energy Efficiency Programs

ScottishPower/PacifiCorp commit to continue to support funding for cost effective and prudent energy efficiency in Utah which focus on reducing the energy used, increasing comfort, lowering the total cost of energy, reducing risk by diversifying the electric resource mix and reducing environmental impacts. (SP Exhibit 7, pages 4-6.)

4. Other Environmental Commitments

ScottishPower has made a number of other environmental commitments. PacifiCorp will contribute $100,000, funded by shareholders, to the Bonneville Environmental Foundation for use in the development of new renewable resources and fish mitigation projects. ScottishPower has committed to establish an environmental forum which will provide ScottishPower with external expertise and perspective on strategic issues related to the environment. In addition, PacifiCorp will continue its involvement in the Western Regional Air Partnerships work to develop a regional haze strategy for the western states including Utah.

(SP Exhibit 7, pages 6-7.) PacifiCorp will also have environmental management systems in place that are self-certified to ISO 14001 standards at all PacifiCorp operated thermal generation by the end of 2000. (Joint Exhibit 1, Attachment 1, page 8.)

F. Commitments to Wholesale Customers

The Applicants and Deseret Generation & Transmission ("Deseret") have entered into a stipulation which settles the issues raised by Deseret in the case. In that stipulation, the Applicants and Deseret have agreed on a framework for the resolution of the reliability and other issues between the parties. As a result, Deseret has recommended that the Commission approve the Application.

G. Summary

Approval of the merger between ScottishPower and PacifiCorp will bring a wide range of benefits to PacifiCorp's Utah customers. These include: financial benefits through a merger credit and cost savings; enhanced customer service through specific improvements in network performance and customer service guarantees; and commitments to the communities, environment and employees. Together, these initiatives establish net benefits for PacifiCorp's Utah customers resulting from this transaction.

III. ANY RISKS ASSOCIATED WITH THE TRANSACTION ARE ADDRESSED BY CONDITIONS

The next issue to be addressed by the parties is whether there are any risks associated with the transaction that have not been adequately addressed by conditions in the Stipulation.

ScottishPower, PacifiCorp, DPU and CCS agree that the Stipulation effectively addresses all material risk.

A. There is No Risk That Costs to Customers Will Increase as Result of the Transaction

Applicants have maintained throughout the proceeding that there are minimal or no risks, and primarily benefits, associated with the merger. The stock transaction is a very simple one, involving a change only in the shareholders of PacifiCorp. PacifiCorp will continue to operate on a stand-alone basis. The Commission will exercise a similar degree of regulatory oversight over PacifiCorp as it does today, and the Stipulation establishes a number of conditions designed to ensure that the Commission will not be hampered by the new corporate structure. Moreover, ScottishPower is an experienced operator of regulated utility businesses, which has a goal of raising the standards of PacifiCorp's service. The service standards that ScottishPower committed to introduce, with more accurate performance measurements and reporting of results, should beneficially increase this Commission's ability to monitor PacifiCorp's service performance. (Joint Exhibit 1, Conditions 16, 27-39.) For example, DPU witness, Robert Maloney, testified that more progress had been achieved relating to service standards in six weeks than in the prior three years. (Tr. 1459.)

On the other hand, DPU, CCS and other parties have identified risks associated with the transaction during the course of this proceeding. The extensive set of conditions that Applicants have negotiated with DPU, CCS and others, effectively neutralize all these risks. (Tr. 476.)

Originally some Intervenors were concerned that the merger would lead to increased costs. However, Applicants have agreed to several broad conditions that guarantee that costs assigned to customers will not increase as a result of the merger. Condition 44 of the Stipulation provides that "Rates in Utah shall not increase as a result of the merger". Condition 3 of the Stipulation requires that "No merger transaction related costs shall be allowed in rates". Furthermore, Condition 19 provides that the "Applicants agree to the use of hypothetical capital structure to determine the correct cost of capital for ratemaking purposes in Utah". Other conditions require Applicants to maintain separate PacifiCorp long-term debt (Stipulation, Condition 21), and to obtain Commission approval regarding debt issuances. (Stipulation, Condition 22.)

In addition to the merger credit set forth in Condition 43 and the commitments set forth in Attachment 1 as agreed to in Condition 1, the Stipulation conditions can be categorized generally as follows:

Financial Conditions

Condition No.	General Description
2	Corporate cost allocation methodology and agreement
3	Transaction/transition costs rate treatment
15	Conditions on payment of dividends
18	Will follow FASB52 for U.S. regulatory reporting
19	Will use hypothetical capital structure - A rated
21	Maintenance of separate long-term debt of PacifiCorp
22	PacifiCorp debt issuances need Commission approval (except inter-company loans)
25	Increased/lower cost of capital impacts

Financial Conditions

Condition No.	General Description
26	Rates set using original, not revalued costs and premiums disregarded
44	Rates will not increase as a result of merger
45	Inter-jurisdictional allocation differences and different merger conditions in different states
48	PacifiCorp will not guarantee obligations of ScottishPower. ScottishPower will not pledge assets of PacifiCorp as security

Affiliate Transactions/Corporate Structure

Condition No.	General Description
4	Diversified holdings or investments not to be held by PacifiCorp (electric company) or a subsidiary
7	New affiliates/affiliate transactions with PacifiCorp
10	Officers and employees of all companies in new ScottishPower group to be available to testify
11	Access to necessary books and records
14	Inter-company loans will be subject to existing Umbrella Loan Agreement
20	Will file report detailing PacifiCorp's percentage of group re: assets, expenditure, employees, etc.
47	Notification of Commission of corporate structure changes

Reporting Requirements

Condition No.	General Description
12	Annual Report re: merger savings for five years
17	Numerous reports to be filed re: PacifiCorp
23	Waiver of right to argue preemption re: PUHCA
24	Will give DPU and CCS copies of SEC filed lobbying reports

Conditions re: Acquisitions/Disposals, etc.

Condition No.	General Description
5	Notification of large acquisitions by ScottishPower or merger sale of PacifiCorp as soon as possible after announcement
8	Notification of sale, etc. of utility assets
9	Commission approval for sale, etc. of utility function of PacifiCorp

Environment

Condition No.	General Description
40	Produce integrated resource plan
41	Renewable resources must be prudent investments to be included in rate base

Ongoing Business

Condition No.	General Description
6	Continue to comply with Transfer Pricing Policy of PacifiCorp
46	Continue to comply with procurement policy and competitive bidding requirements of PacifiCorp
49	Provide adequate management and financial resources for PacifiCorp to carry out its obligations

Transition Plan

Condition No.	General Description
13	File within six months of closing

Network Performance

Condition No.	General Description
16	Penalties for failure of network performance standards will be paid as directed by the Commission
27-39	Network performance and service quality standard clarifications and reporting requirements

Employees

Condition No.	General Description
42	Comply with the merger agreement for two years re: employee benefits (i.e., they will not change for two years)

These 51 conditions, along with all of the other commitments the Applicants have agreed to, mitigate any risks associated with the ScottishPower/PacifiCorp transaction.

The most recent position statement from the Industrial Customers was filed on Monday, August 2, 1999. It urged the Commission to consider the following issues:

B. Taxes

The Industrial Customers requested that any potential income tax savings resulting from the ownership of PacifiCorp flow through to PacifiCorp's customers and that this requirement be added as a condition to the Stipulation.

ScottishPower testified that there is a potential for tax efficiency of the ownership structure upstream of PacifiCorp going forward, but that it is not clear that tax savings will be achievable. (Tr. 1505-1506.)

DPU witness, Lowell Alt, testified that historically DPU has not looked at consolidated operations regarding taxes, but that this could be a rate case issue. (Tr. 86-87.) CCS witness, Dan Gimble, agreed that the consolidated tax issue could be addressed in a rate case. (Tr. 89-91.)

To the extent there is any question regarding the existing authority of the Commission to review tax issues, the Applicants offered the following language set forth in Cross Examination Exhibit 2 regarding the consolidated tax issue which could be added as a condition of the merger.

ScottishPower and PacifiCorp agree to an additional Condition to approval of this merger that states:

> "The parties to this Docket preserve their right to raise the issue of the treatment of upstream tax savings and costs in future rate cases. All parties preserve their positions and have not waived their rights on this issue. ScottishPower commits to retain records regarding upstream tax savings and costs relating to the merger and make these records available to the DPU, CCS and other parties in accordance with Stipulation Ex. 1 and the discovery rules of the Commission."

This condition would resolve all concerns regarding this issue. There are many complex considerations in respect of this matter and these can be adequately and fully addressed in a rate case.

C. PacifiCorp Cash

The Industrial Customers have raised a concern regarding cash held in PacifiCorp and whether adequate conditions are in place to preclude the upstream movement of cash until service quality in Utah has been found adequate. There are currently in the Stipulation several conditions which address this issue. First, ScottishPower/PacifiCorp have agreed to the provisions of the Umbrella Loan Agreement which places limits on short term loans. In addition, the Commission will approve the issuance of PacifiCorp debt as set forth in Condition 22. The provisions of Condition 15 govern dividend policies. Condition 49 provides that there will be adequate financial resources to enable PacifiCorp to meet its commitments, activities and public service obligations. Conditions 16 and 27-39 deal with service quality issues, in addition to the commitments in the direct testimony of Bob Moir. These conditions provide assurance that PacifiCorp will be adequately funded while at the same time service quality will be improved.

D. Access to Employees and Records

The Industrial Customers requested that access to employees and records be the same for Intervenors as for representatives of the DPU and the CCS. Condition 11 provides for adequate access to relevant books, records and officials of ScottishPower entities. Corporate records will be available for inspection in Utah or Portland, Oregon, and Intervenors will have, as is the current practice, access to books and records in Utah and Portland, Oregon. (Tr. 58-61.) Also, ScottishPower and PacifiCorp and all affiliates shall make their employees, officers, directors and agents available to testify and provide information. (Stipulation, Condition 10.)

E. Utah Presence

The Industrial Customers have requested that as a condition of this merger, the Commission should require that ScottishPower/PacifiCorp provide agents in Utah capable of binding PacifiCorp and making decisions regarding Utah operations. In the letter agreement with the DCED and DBED (SP Exhibit 1R.1), ScottishPower agreed to relocate a senior executive to take up residence in Utah. The executive will report directly to the CEO of PacifiCorp. As a member of the executive team, this person will have broad influence over PacifiCorp's operations in Utah. In addition, Utah Power & Light Division headquarters will be located in Utah. These commitments along with all of the other commitments in this Docket adequately address the Industrial Customers' concern regarding this matter.

F. Existing Evidence

The Industrial Customers requested that highly sensitive Confidential Information be filed with the Commission relating to tax savings and projections for PacifiCorp's operations. These documents have been entered into the record and are governed by the terms and conditions of the Protective Order in this Docket. No additional provisions are required.

G. Stranded Costs

The Industrial Customers recommended that as a condition to the merger that PacifiCorp and ScottishPower renounce any future claim to any stranded costs relating to PacifiCorp because of the payment of a premium. UIEC witness, Maurice Brubaker, admitted that he was unaware of any merger proceeding where a merger approval was conditioned upon the merged company agreeing not to make a claim for stranded cost recovery. (Tr. 1315.) In addition, Mr. Brubaker, in reviewing Cross Examination Exhibit 25, admitted that all of the acquisitions of electric utilities reflected in that exhibit included a premium. Indeed, the premium in this transaction is at the lower value end of the scale compared to other premiums in the exhibit. (Tr. 1310.) Stranded cost issues are not appropriate for this proceeding and the evidence shows that a waiver of stranded cost claims is unprecedented in U.S. mergers. Rather, the Utah Legislature is reviewing industry restructuring issues through its Electric Deregulation and Customer Choice Task Force and the Applicants are prepared to contribute to discussions in that forum. (SP Exhibit 1R, pages 12-13.)

H. Regional Transmission Organization (“RTO”)

The Industrial Customers have recommended that the Commission require, as a condition of the merger, that the Applicants agree to join a RTO within 24 months after approval of the merger. In the alternative, Industrial Customers requested a condition that the Applicants file within 18 months after the approval of the merger, a definitive plan outlining how they would place transmission assets in the hands of an independent and capable third-party administrator. Nucor witness, Dennis Goins, testified that he has previously criticized a recommendation that a utility join a non-existent mid-west Independent System Operator (“ISO”) as a remedy for competitive issues for variety of reasons including issues regarding the ISO’s membership structure. (Tr. 1028-1032.) UIEC witness, Maurice Brubaker, admitted that mergers which required a commitment to join a RTO had situations where market power was impacted as a result of the merger. (Tr. 1287-1303.) Mr. Brubaker testified as follows:

> Q. When FERC applied the guideline ..., it found, did it not, because ScottishPower and PacifiCorp do not compete in common geographic markets, there’s no change in the concentration of the market and therefore no transaction related effect on the competition?
>
> A. That’s correct.
>
> Q. And then basically, FERC found that there was no competitive harm resulting from the transaction and rejected that argument?
>
> A. Correct.

(Tr. 1290-1291.)

ScottishPower is simply purchasing the stock of PacifiCorp. PacifiCorp will continue to operate in its existing service territory. Competitive issues were reviewed by the Federal Energy Regulatory Commission ("FERC"). The Federal Trade Commission performed a Hart/Scott/Rodino review and cleared the transaction. These entities did not impose any requirement regarding a RTO. FERC has established a Notice of Proposed Rulemaking, Docket RM99-2 regarding "Regional Transmission Organizations" and proposes to establish fundamental characteristics and functions for appropriate retail transmission organizations. (UIEC Exhibit 1, page 40.) That is the place where this issue should be reviewed.

I. Special Contracts.

The Industrial Customers have recommended that special contracts that expire during the merger credit period be extended through December 31, 2003, if desired by the customer.

Relating to special contracts, ScottishPower testified as follows:

> As we have stated previously, after the transaction, PacifiCorp will honor all of its contractual obligations. We value our relationship with all our customer classes, and it may be appropriate to evaluate the issue of special contracts following completion of the transaction. This evaluation must be done in parallel with the work of the task force recently appointed by the Commission to examine this issue. The Public Service Commission of Utah issued a Report and Order on March 4, 1999 in Docket No. 97-035-01 ("Order") establishing a task force to study the standards the Commission should employ in approving special contracts and the regulatory treatment of all special contracts stating that:
>
>> We conclude that the Task Force desired by the Company and the Division, which we herein establish, should re-examine the previous Task

> Force guidelines and definitions for regulatory treatment of special incentive contracts, with particular emphasis on how risk should be shared between the Company and its customers. We also want an evaluation of the appropriateness of the confidential treatment customarily given to the rates and terms of service in Utah special contracts in an increasingly competitive environment. (Order, Section V.B.)

> The Commission has therefore established a procedure to examine the issue of special incentive contracts. PacifiCorp will participate in this process and add its resources to the task force. Prior to completion of the transaction and until the Commission's task force has finished its work, however, the discussion regarding special contracts is premature and should not be an issue in this docket.

(SP Exhibit 1S, pages 17-18.)

ScottishPower witness, Andrew MacRitchie, testified regarding special contracts that: (1) ScottishPower will honor all existing contracts; (2) PacifiCorp will allow ScottishPower representatives to join the PacifiCorp negotiating team ahead of completion of this transaction, if the customers so wish; and (3) ScottishPower/ PacifiCorp will negotiate all contracts in good faith, complete such negotiations promptly (understanding the possible needs for customers to pursue alternatives), negotiate contracts recognizing the contribution these customers make to the economic well-being of Utah and negotiate in accordance with Commission rules in effect at that time. (Tr. 1487-1488.)

This proceeding should not be the place where special contract issues are decided. The Commission's task force is reviewing special contract issues. ScottishPower's purchase of PacifiCorp's stock does not alter special contract customers' situations. Any condition regarding extension of special contracts should be rejected by the Commission.

At public witness day on August 6, 1999, Magcorp submitted its request that it be "decertified from PacifiCorp's retail service area" as a condition of the approval of the Stipulation. That proposed condition is neither merger related nor supported by the evidence in this record and should be rejected.

Magcorp argues that it has "been excluded" from any of the benefits of the Stipulation and "denied the opportunity to negotiate a future supply arrangement" and, as a result, decertification is an appropriate remedy. Contrary to those assertions, Magcorp, like the other special contract customers, will receive benefits, including the system reliability and performance guarantees.

In addition, the Applicants have committed, as described in this section, to commence and complete negotiations regarding supply arrangements promptly. Magcorp's assertions are not supported in this record and its proposed condition should be rejected.

J. Franchise Issues

The League has requested that the Applicants be required, as a condition of merger approval, to "reopen current franchise agreements". As the Applicants noted in their testimony and motion to strike, the abrogation of contracts, including franchise agreements, is not an appropriate condition of the transaction.

K. Summary

The Industrial Customers have not identified any risks or issues arising from this transaction that are not adequately addressed by conditions. None of the additional conditions proposed by the Industrial Customers should be required by the Commission. As shown above, these conditions either do not address risks that are merger-related issues or they are unnecessary.

The League and Magcorp's issues are similarly not appropriate for this proceeding.

CONCLUSION

Approval of this transaction will deliver net benefits to PacifiCorp's Utah customers. ScottishPower has committed to improve system performance and customer service with an unmatched package of initiatives that will benefit all of PacifiCorp's customers. The merger credit of $48 million establishes a guaranteed financial benefit to customers, which places the value of the transaction beyond any reasonable dispute. Scottish Power intends to deliver cost savings that can be passed through to customers in rates. ScottishPower will also deliver benefits from its environmental commitments and other commitments to communities and employees. The conditions that Scottish Power, PacifiCorp, DPU and CCS have agreed to ensure that these benefits will be delivered and that customers will not be harmed.

In sum, approval of this transaction will serve PacifiCorp's customers in the public interest. For the reasons set forth above, the Commission should approve the Application.

DATED this ___ day of November, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing ***POST-HEARING BRIEF OF APPLICANTS SCOTTISH POWER PLC AND PACIFICORP*** to be served upon the following persons via Federal Express or by mailing a true and correct copy of the same, postage prepaid, to the following on November 9, 2012:

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