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

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

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

REPLY BRIEF
OF APPLICANTS
SCOTTISH POWER PLC AND PACIFICORP

TABLE OF CONTENTS

INTRODUCTION 1

ARGUMENT 2

I. STANDARD FOR APPROVAL OF THE APPLICATION 2

II. NET BENEFITS WILL RESULT FROM THE TRANSACTION 4

A. Merger Credit 4

B. Transition Plan 5

C. Improvements in Network Performance and Customer Service 6

D. Summary 8

III. ANY RISKS ASSOCIATED WITH THE TRANSACTION ARE ADDRESSED BY CONDITIONS 8

IV. INDUSTRIAL CUSTOMERS' ISSUES 10

A. Taxes 10

B. Rate Cap 12

C. Special Contracts. 14

D. Stranded Costs 16

E. Regional Transmission Organization ("RTO") 17

F. Magnesium Corporation of America ("Magcorp") Issues 19

G. Summary 19

CONCLUSION 20

Scottish Power plc ("ScottishPower") and PacifiCorp (together, "Applicants"), respectively submit this Reply 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.

The only active opponents to the Application are: the Utah Industrial Energy Consumers ("UIEC"), the Large Customer Group ("LCG") and Nucor Steel ("Nucor"). These parties are collectively referred to as the "Industrial Customers". The Industrial Customers failed to raise any issues in their Post-Hearing Briefs that are sufficient to justify the Commission's rejecting the Application or imposing any conditions beyond those already agreed to by the Applicants. The Industrial Customers have suggested that the fact that they are opposing the merger should give the Commission "tremendous pause" in approving the transaction. (LCG Brief, page 3.) The fact remains that the transaction benefits all of the 622,250 residential, commercial and industrial customers of PacifiCorp as well as the eight special contract customers located in Utah. (Hearing Transcript ("Tr.") 1483.) The entities which represent the overwhelming majority of Utah customers support the merger and only a handful of customers continue to oppose the transaction.

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 standard for approving the ScottishPower/PacifiCorp transaction is whether the transaction is in the "public interest." UTAH CODE ANN. § 54-4-31. The Utah Supreme Court has interpreted this standard to mean that no harm will come to the public (the "no harm" standard). See Milne Truck Lines, Inc. v. Public Service Comm'n, 720 P.2d 1373, 1380 (Utah 1986) (citing to Collett v. Public Service Comm'n, 211 P.2d 185, 187 (Utah 1949)). The Commission, however, has interpreted the "public interest" to be a "positive benefits" standard. See Re CP National Corp., 43 PUR 4th 315 (Utah PSC 1981) and Re Utah Power & Light Co., 90 PUR 555 (Utah PSC 1987).

While Applicants believe the "no harm" standard to be the appropriate standard, the evidence presented in this docket meets the higher "positive benefits" standard used by the Commission in CP National Corp. and Utah Power & Light.

In its Post-Hearing Brief, the LCG fashioned, a new interpretation of "public interest." According to the LCG the "public interest" standard imposes a heavy burden on the Applicant to show by substantial evidence, with paramount considerations on rate and reliability issues, that any demonstrable and measurable benefits of the proposed acquisition will clearly outweigh any potential risk or negatives. (LCG Post-Hearing Brief, pages 4-5.)

The LCG created this new standard by inappropriately relying on two cases. First, the LCG relied upon White River Shale Oil Corp. v. Public Service Comm'n, 700 P.2d 1088 (Utah 1985), to support that the "public interest" standard should be interpreted in the context of the Public Utilities Act and thus rate and reliability issues should be paramount considerations. (LCG Post-Hearing Brief, page 4.) The White River case related to the Commission's authority to issue a Cease and Desist Order, stopping construction of a transmission line extension. White River does not support the LCG's assertion, and instead, holds that the term "public interest" is a

sufficient standard for a legislative delegation of authority when read in light of the entire Public Utilities Act. See White River, 700 P.2d at 1091-92 (stating: "'Public interest' certainly falls within this class of standards and, when read in light of the entire Public Utilities Act, is not so broad as to result in an improper delegation of authority."). White River says nothing about giving rate and reliability issues paramount consideration when contemplating the positive benefits or negative impacts of a proposed acquisition.

LCG then relies upon Utah Dept. of Business Regulation, Div. of Public Utilities v. Public Service Comm'n, 614 P.2d 1242 (Utah 1980) to support the assertion that the Applicants have a heavy burden of showing by substantial evidence that any demonstrable and measurable benefits will clearly outweigh any potential risks or negatives. The Utah Dept. of Business case involved a utility asking for a rate increase to pass through increased wage costs, a single item of cost of service. The procedures to be followed, and the standard applied in approving a rate increase are substantially different from those involved in approving the merger of a public utility. The standard is not the same as approving a rate increase, as LCG would have the Commission believe. There is no statutory or case law stating that the Applicants in a merger have a "heavy burden" or that they must produce "substantial evidence". The Commission has previously stated: "Our task is to consider them all [positive benefits and negative impacts], giving each its proper weight, and determine whether on balance the merger is beneficial or detrimental to the public." Re: Utah Power & Light, 90 PUR 4th 555 (Utah PSC 1987). The evidence set forth in this proceeding demonstrates that the Application meets both the "no harm" standard and the "positive benefits" standard. Applicants ask the Commission to reject the newly fashioned and inappropriate standard presented by the LCG.

In their discussion of the legal standard, the Industrial Customers fail to mention their burden in this case. In its May 10, 1999 Order, the Commission directed each party to demonstrate why each issue raised by it should be considered in this docket, indicating

specifically how those issues could be affected by the proposed merger, and identifying the remedy the party seeks to achieve by its condition. The Commission should consider this standard in its analysis of the conditions proposed other parties in this proceeding.

II. NET BENEFITS WILL RESULT FROM THE TRANSACTION

The Applicants have made significant commitments 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. Many of the criticism of the transaction listed in the Industrial Customers Post Hearing briefs cite to the Division of Public Utilities ("DPU") and the Committee of Consumer Services ("CCS") witnesses' testimony which was filed prior to execution of the Stipulation, defined below, and as a result of which these witnesses now fully support the merger. Some of the issues relating to benefits are categorized and discussed below.

A. Merger Credit

The DPU, the CCS, ScottishPower and PacifiCorp, entered into a stipulation dated July 28, 1999, Joint Exhibit No. 1 (the "Stipulation") which provides for a merger credit as detailed in the Applicants' Post Hearing Brief. The Industrial Customers have criticized the merger credit as being insignificant and not much greater than the net present value of the annual corporate cost savings proposed in the Applicants initial filings. (LCG Brief, page 9; Nucor Brief, page 11; UIEC Brief, page 6.) The fact is that the merge credit at $12 million per year begins immediately. (Hearing Transcript ("Tr.") 869.) The $48 million merger credit is therefore guaranteed to the Utah tariff ratepayers for the entire four-year period. UIEC has confused the merger credit with a PacifiCorp rate case that will be filed based upon a 1998 test year. (UIEC Brief, page 6.) However, UIEC later agrees that a rate case may be appropriate for the 1998 test year. (UIEC Brief, page 21, footnote 14.)

No rate case is required for the merger credit to be reflected in rates. Except for the merger, PacifiCorp had no plans to offer this credit to customer bills or do any of the other things promised by ScottishPower. (Tr. 36, 672.)

B. Transition Plan

The Industrial Customers have suggested that final approval of the transaction should be delayed pending the filing of the transition plan. That condition is both impractical and unnecessary. The record shows that prior to the closing of the transaction, ScottishPower has significant legal and practical impediments to the development of a meaningful plan. (Tr. 930-932.) The record also shows that, even if the transition plan condition was achievable, the Stipulation addresses any legitimate concerns regarding the public interest benefits of the merger, making a transition plan condition unnecessary.

Nucor express concern regarding the difficulty in identifying whether costs or savings are merger related. (Nucor Brief, page 19.) The transition plan will set forth a list of initiatives showing costs and benefits over the transition period. (Tr. 1490.) 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 the merger. (Stipulation, Condition 13.) The Commission should not delay final approval of the merger pending filing of the transition plan.

C. Improvements in Network Performance and Customer Service

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.)

The Industrial Customers have taken conflicting positions in this proceeding regarding ScottishPower's plans for network performance and customer service. The Industrial Customers have argued that:

- The benefits of improved network performance are not "desired, necessary or cost effective". (LCG Brief, page 9.)
- The benefits of improved network performance and customer service are of a speculative nature, that the proposed improvements are minimal, the costs unknown, and the benefits unsubstantiated. (Nucor Brief, pages 12-14.)
- PacifiCorp should be held to the same service quality standards. (UIEC Brief, page 9.)

At the same time, the Industrial Customers appear to be very concerned with service quality and have stated:

- Reliability issues should be a paramount consideration in this proceeding. (LCG Brief, page 4.)
- The merger may affect service quality and reliability. (Nucor Brief, page 8.)
- The potential financial detriment to special contract customers from decreased reliability is enormous. (LCG Brief, page 13.)
- The Industrial Customers are concerned that the service standards are not aimed at them. (LCG Brief, pages 13-14.)
- A single customer may not individually experience improvement in overall network performance. (UIEC Brief, page 10.)

Certainly the Industrial Customers value network performance and customer service. ScottishPower has offered a package that will make significant improvements in these areas. The facts on the record in this proceeding are as follows:

a. All customers benefit from improved network performance. (Tr. 866.)

b. ScottishPower's planned improvements will have an estimated dollar value of approximately $61 million annually and up to $600 million on a net present value basis. (SP Exhibit 1S, page 5.)

c. Other studies confirm the estimated dollar value of system performance improvements ranging from $31 million to $61 million. The studies with lower estimates excluded large commercial and industrial customers from the study base. (SP Exhibit 3R, pages 12-15; Tr. 821.)

d. Utah will benefit approximately $20 million per year from network performance. (Tr. 1483.)

e. ScottishPower has backed up its commitments with financial penalties. (SP Exhibit 2, page 9.)

f. ScottishPower witness Bob Moir discussed in detail ScottishPower's plans for improving and focusing upon customer service. (SP Exhibit 2, pages 3-5.)

g. DPU witness, Maloney, testified that "we'd probably work two to three years before we'd get anything close to what we've got on the table right now", referring to ScottishPower's proposal. Mr. Maloney also thought that ScottishPower's proposal will be more effective because it is voluntary. (Tr. 1459.)

h. The $55 million investment in improvements in customer service and system performance will come from a redirection of existing budgets and savings in other areas such that there will be no new incremental costs 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.)

i. 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 be fairly diminished on speculation that PacifiCorp might have achieved some of the same improvements on its own. Also ScottishPower's experience means greater certainty of delivery.

There is no evidence that any of the cost savings associated with the merger will affect safety and reliability. Indeed, the evidence is to the contrary. 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 PacifiCorp's customers.

D. Summary

Approval of the merger between ScottishPower and PacifiCorp will bring a wide range of benefits to PacifiCorp's Utah customers, as listed in detail in Applicants' Post-Hearing Brief. The Industrial Customers' remarks have not diminished the benefits associated with the transaction. The benefits of the transaction are numerous and well documented in the record of this proceeding.

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 risks.

The Industrial Customers have identified risks associated with the transaction. In some circumstances, they cited to testimony of the DPU and the CCS which was filed before the Stipulation. The extensive set of conditions that Applicants have negotiated with DPU, CCS and others, effectively neutralize all these risks. (Tr. 476.) DPU Exhibit 1.0 SR lists every issue that the DPU was concerned about and demonstrates how these concerns were addressed. The Commission should take comfort that an extensive review of the issues in this docket has resulted in a comprehensive Stipulation which provides protection for Utah.

The UIEC has argued that the Stipulation is ambiguous and, as a result, the Commission may find it difficult to implement. (UIEC Brief, page 16.) The UIEC has tried to create the impression of ambiguity where there is no real question regarding the terms of the Stipulation.

For example, the UIEC states that there is confusion regarding whether Condition 14 of the Stipulation precludes loans from PacifiCorp to ScottishPower. As support for that statement, UIEC cites a transcript reference where Mr. Alt states that he is not the DPU expert on this condition. However, the UIEC ignores Mr. O'Brien's testimony that PacifiCorp could not lend money to anyone in the ScottishPower group above PacifiCorp. (Tr. 720.) There is no confusion here.

In any event, the Commission will, as the DPU and the CCS pointed out, have the authority to resolve disputes regarding these issues just as they resolve disputes about other issues on a regular basis.

Applicants have maintained throughout the proceeding that the risks, if any, of the merger are far outweighed by its benefits. 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, including conditions relating to access to books and records (Condition 11), numerous reports filed by PacifiCorp (Condition 17), annual reports regarding merger savings for five years (Condition 12), as well as numerous other conditions outlined in Applicants' Post Hearing Brief. There is no basis on the record to support UIEC's assertions that the merger will somehow deprive the Commission of effective regulatory authority.

The Industrial Customers are concerned that the merger will lead to increased costs. There is no evidence to support this concern. ScottishPower's track record has demonstrated successful management. In addition, Applicants have agreed to several broad conditions in the Stipulation that guarantee that costs assigned to customers will not increase as a result of the merger as set forth in Applicants' Post Hearing Brief.

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

IV. INDUSTRIAL CUSTOMERS' ISSUES

A. 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.

The Industrial Customers in their Post-Hearing Briefs referred to the potential tax savings that may accrue to upstream affiliates of $109.2 million from the transaction. (LCG Brief, pages 3, 16; UIEC Brief, pages 5, 18; Nucor Brief, page 35.) This reference is completely inaccurate. The source of this figure is testimony on an issue which is entirely unrelated to asserted tax savings. During the hearings, the testimony of CCS witness Neal H. Talbot was cited – incorrectly -- as containing an estimate of tax savings flowing from the transaction, and a figure of $109 million was used. In fact, this figure was generated by Talbot as a hypothetical intended to illustrate the impact of double leveraging the capital structure, and there is no mention of asserted "tax savings" flowing from the transaction. Mr. Talbot's testimony, CCS Exhibit 4, Pages 44-48, presents a hypothetical situation illustrating the application of double leveraging in determining the capital structure for ratemaking purposes. At page 48, line 20, he arrives at a revenue requirement of $109.2 million associated with this example.

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.)

In fact, there may not be any tax savings whatsoever associated with the transaction. Tax savings do not arise from the transaction itself, but in the calculation of

the tax liability on an ongoing basis following the transaction. Tax savings arising from a transaction of this sort are by their very nature speculative as they depend on the tax legislation in existence at the time the tax liability is calculated. For these reasons, the issue cannot properly be addressed in this proceeding. Rather, the issue should be addressed in a subsequent general rate proceeding when the facts are known regarding the tax liability after the transaction.

In this regard, the Applicants proposed the following condition at the hearing as a means of addressing this issue:

> 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.

(Cross Examination Exhibit 2.)

In subsequent general rate proceedings, it will be known whether any tax savings actually materialize. At that time, if tax savings materialize, the Commission will have an opportunity to consider the issue. Moreover, there is an associated policy question of whether the Commission wishes to adopt a practice of looking beyond the regulated utility operations for purposes of determining the tax liability for ratemaking purposes. If the Commission wants to include tax benefits associated with consolidated taxation, it must also consider the costs and risks of consolidated taxation. That issue is unrelated to this transaction; it arises whenever a regulated utility is part of a larger consolidated corporate structure where tax savings may be created from non-utility operations, thereby reducing the consolidated tax liability. Such a policy question need not, and should not, be examined in this proceeding. The Commission should not impose a condition

requiring that any tax benefits of the merger be given to ratepayers. There is absolutely no evidence on the record related to the consolidated tax issue. There is no evidence on which to make a finding regarding consolidated taxes.

DPU witness, Lowell Alt, CCS witness, Dan Gimble, agreed that the consolidated tax issue could be addressed in a rate case. (Tr. 86-91.)

The proposed condition resolves 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 and should be considered there.

The LCG suggests that the tax issue must be dealt with in this proceeding so that it is a merger benefit. The Applicants have clearly demonstrated that the merger is in the public interest without consideration of the tax issue.

B. Rate Cap

In their initial briefs, the Industrial Customers insist that a rate cap is required to ensure that the merger meets the public interest standard. That assertion is not supported by the record.

The Applicants provided evidence that a rate cap was not required to establish that there are net positive benefits for Utah customers from the merger. In their testimony, the Applicants identified significant benefits to customers from the merger, including the merger credit and the system performance and customer service commitments made by the Applicants, as well as their commitments to the environment, employees and communities. (SP Exhibit 1R, page 8.) The Applicants' testimony also explained that any legitimate risks associated with the merger, including rate related risks, have been adequately addressed by the Stipulation. (SP Exhibit 1R, page 8.) For example, the Stipulation includes commitments that rates will never rise as a result of the merger (Condition 44), and that no transaction related costs shall be allowed in rates (Condition

3). The Applicants have agreed to the use of a hypothetical capital structure for ratemaking purposes (Condition 19).

The Applicants also provided evidence that the rate cap takes no account of underlying business economics unrelated to the merger. (Tr. 1504.)

The two regulatory agencies with the statutory responsibility to represent the broad public interest also concluded that a rate cap was unnecessary. The DPU and the CCS testified that they had performed an exhaustive review and analysis of the potential risks of the transaction and, based on that review, reached the conclusion that the Stipulation protects customers against merger-related risks and provides customers with significant benefits. (Tr. 21-38, 360-362) As a result, they determined that a rate cap was not required to meet the public interest standard. (DPU/CCS Joint Brief, pages 8-9.) The DPU and CCS also expressed their view that the Industrial Customer's five year absolute rate cap would "more than likely do nothing more than assure all concerned that the transaction would not occur." (DPU/CCS Joint Brief, page 8.)

While the Industrial Customers' response to the DPU and CCS testimony was that they must have been "captured" or co-opted by those they regulate, the record supports their conclusion that a rate cap is not required for this merger to satisfy the public interest standard. (UIEC Brief, page 13.)

The Farm Bureau Federation requested a similar condition in its Brief. (Farm Bureau Brief, pages 3-4.) For the reasons discussed above, their proposed condition should also be rejected.

For all the reasons stated above, the rate cap or rate freeze proposals are inappropriate and the Commission should reject any suggestion of a condition relating thereto.

C. Special Contracts.

The Industrial Customers have recommended that, as a condition of the merger, the Commission should require the extension of special contracts through 2003. As support for their position, they make several assertions. The first is that "special contract negotiations stopped dead in their tracks" after the application in this docket was filed. (UIEC Brief, page 23.) There is no evidence in this record to support the assertion that the merger has influenced either the timing of negotiations, or the willingness to negotiate with the special contract customers.

A second assertion made by the Industrial Customers is that "there is no present indication that current costs (of the special contracts) will not be compensatory through the transition period." (UIEC Brief at 24) That assertion is also not supported by the record. DPU witness Powell testified that the current Utah special contracts were approved based on analyses that showed PacifiCorp did not need additional capacity during the term of those contracts. (Tr. 1402) Mr. Powell also testified that he was aware of changes in PacifiCorp's load and resource balance that could now require capacity additions. (Tr. 1403) That testimony certainly qualifies as the "present indication" referred to by the Industrial Customers.

A third assertion made by the Industrial Customers is that, as a result of the efficiencies in operation associated with the merger, "there will be very little risk of harm either to the company or its tariffed customers in extending special contracts through the transition period." (UIEC Brief page 24.) Since the need for new capacity is not impacted by the cost reductions contemplated under the merger, and since PacifiCorp is facing potential changes in its load and resource balances, it is difficult to see how merger related cost reductions could eliminate the risks associated with serving special contract customers at current prices through 2003. (Tr. 1403)

Another Industrial Customer assertion is that the special "contracts at issue in this docket are not firm." (UIEC Brief, page 24) That assertion is incorrect. Special contract customers in Utah do, in some instances, receive firm service under their existing contracts. (Tr. 1398-1399)

Finally, the Industrial Customers argue that special contract customers need protection against merger related risks and it would be discriminatory to deny them extensions of their contracts. That is in essence the same argument raised in Docket No. 87-035-27 (the Utah Power/PacifiCorp merger proceeding). In that case, the Commission rejected proposed contract amendment conditions, stating that:

> "in this era of increased competition and low energy prices the industrial customers have other options for power supply ... which they have been able to use to some advantage in negotiating power contracts with Company. It is therefore unlikely that these customers will be left "holding the bag" after the merger is consummated.

The Commission's reasoning in that prior merger case is equally applicable to the special contract customers in this case. The current special contract customers have special contracts because they had other options for power supply. (Tr. 1402) The merger does not alter either the risks those customers face, or the alternatives they have. In addition, the Applicants have made additional commitments to address special contract customer concerns, including commitments to honor all existing contracts, to negotiate all contracts in good faith and to complete negotiations promptly in recognition of the possible need for customers to pursue their alternatives. (Tr. 1487-1488)

Special contract customers benefit from many aspects of the transaction including benefits associated with network performance improvements and related cost reductions. The commitments included in the Stipulation, along with the assurances made on the record at the hearings, also provide protection against the perceived risks that the

Industrial Customers claim exist for special contract customers. Any condition regarding extension of special contracts should be rejected by the Commission.

D. Stranded Costs

UIEC and Nucor recommend 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 Brief, page 26; Nucor Brief, page 38.) 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.)
- All of the acquisitions of electric utilities reflected in Exhibit 25 included a premium. (Tr. 1310.)
- The premium in this transaction is at the lower value end of the scale compared to other premiums in the exhibit. (Tr. 1319.)

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.)

E. Regional Transmission Organization ("RTO")

UIEC recommended that the Commission require, as a condition of the merger, that the Applicants "make a commitment about planning and participating in a regional transmission organization ("RTO")". (UIEC Brief, page 28.)

UIEC has attempted to interject completely irrelevant issues into this proceeding by referring to issues in the U.K. which are not germane to this docket. The laws, regulations and level of regulation in the U.K. differ from the situation in Utah and are

not relevant to the establishment of a RTO. UIEC's reference to the U.K. government's "special share" has no relevance to any future RTO formation proposed by PacifiCorp.

> As explained in Alan Richardson's Supplemental Testimony:
> The practical effect of the "special share" is to require government approval before control of ScottishPower may be transferred, much like the regulatory statutes in many of the states which require utility commission approval before control of a regulated utility passes to another. It comes into play only if a transfer of ownership of ScottishPower is involved, and does not in any way impose any restrictions on the actions which ScottishPower may take with respect to its own business or PacifiCorp.
> (SP Exhibit 1S, page 18.)

Membership in a RTO does not require the sale of transmission assets, only that operation be turned over. Thus, even if the special share would otherwise have implications with respect to a sale of ScottishPower, it has no relevance whatsoever to the formation of a RTO as no sale or transfer of facilities is involved. The Commission should reject the request of UIEC to impose a RTO as a condition of approval of the transaction. The following summary of the testimony on the RTO issue at the hearing sheds light on this matter.

UIEC witness, Brubaker, admitted that:

- The Utah Commission is not required to apply the Department of Justice/Federal Trade Commission ("FTC") guidelines. (Tr. 1288.)
- The Federal Energy Regulatory Commission ("FERC") adopted the horizontal merger guidelines of the FTC. (Tr. 1289.)
- UIEC intervened at FERC and argued that ScottishPower/PacifiCorp transaction would have an adverse impact on competition. (Tr. 1290.)
- FERC found that because ScottishPower and PacifiCorp did not compete in common geographic markets, there was no change in concentration of the market and therefore no transaction related effect on competition. ("Tr. 1290.)
- FERC found no competitive harm from the transaction and rejected UIEC's argument. (Tr. 1290-1291.)

- UIEC requested that FERC condition approval of this transaction on the Applicants participating in the formation of and joining a RTO. (Tr. 1295.)

- FERC has the authority to condition the approval of the transaction on joining a RTO. (Tr. 1295.)

- FERC concluded that there was no basis for conditioning the transaction on transmission related requirements. (Tr. 1296.)

- The Utah Commission does not have the authority to directly order PacifiCorp to participate in a RTO. (Tr. 1297.)

- Every situation cited where the requirement on participating in a RTO or independent system operator was imposed involved a concern regarding market power. (Tr. 1297-1303.)

ScottishPower is simply obtaining 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"). 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.

F. Magnesium Corporation of America ("Magcorp") Issues

Magcorp requested that the Commission condition the merger by removing Magcorp from PacifiCorp's exclusive service area. (Magcorp Brief, page 1.) In effect, Magcorp is requesting that the Commission revoke PacifiCorp's certificate and create a retail access zone for Magcorp. Magcorp has not and could not provide evidence which would justify the revocation of PacifiCorp's certificate. See e.g. Silver Beehive Tele. Co. v. PSC, 512 P2d 1327 (Utah 1973). Magcorp has also failed to cite any case or statute which would justify the creation of a separate regulatory structure for Magcorp. Retail access is currently under review by the Utah Legislature in its Electric Deregulation and

Customer Choice Task Force and should be considered there. In any event, the issues raised by Magcorp are not merger related and are not relevant to this docket.

G. Summary

The Industrial Customers have not identified any risks or issues arising from this transaction that are not adequately addressed by conditions and the evidence on this record. 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.

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. 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. The conditions proposed by the Industrial Customers and Magcorp should be rejected.

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.

STOEL RIVES LLP

____

Edward A. Hunter
Attorneys for PacifiCorp

CALLISTER NEBEKER & MCCULLOUGH

____

Brian W. Burnett
Attorneys for Scottish Power plc

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing ***REPLY 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Arthur F. Sandack
Attorney at Law
8 East Broadway, Suite 620
Salt Lake City, UT 84111

____